STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SprintCom, Inc., Wireless Co., L. P., NPCR, Inc. d/b/a Nextel Partners and Nextel West Corp.'s Petition for Arbitration	)	
	)	Docket No. 12-0550
Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company.	)	

STAFF OF THE ILLINOIS COMMERCE COMMISSION'S INITIAL BRIEF

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INITIAL BRIEF OF THE STAFFOF THE ILLINOIS COMMERCE COMMISSION

The Staff ("Staff") of the Illinois Commerce Commission ("Commission" or "ICC"), by and through its counsel, and pursuant to Section 200.400 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.400), respectfully submits this Initial Brief in the above-captioned matter.

I. JURISDICTION

Section 252(b) of the Telecommunications Act of 1996 ("Act") addresses the procedures for arbitration between incumbent local exchange carriers and other telecommunications carriers requesting interconnection. Section 252(b) prescribes the duties of the petitioning party, provides an opportunity to respond to the non-petitioning party, and sets out time limits. Section 252(b)(4) provides that the State Commission shall limit its consideration to the issues set forth in the petition and in the response; and

shall resolve each such issue by imposing appropriate conditions on the parties as required to implement Section 252(c) (Standards for Arbitration). Section 252(d) sets out pricing standards for interconnection and network element charges, transport and termination of traffic, and wholesale prices.

Under Section 252(b), a State Commission shall apply the following standards for arbitration:

> (1) ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the Commission pursuant to Section 251;
> (2) establish any rates for interconnection, services, or network elements according to subsection (d); and
> (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

Also relevant to this arbitration are the policy goals mandated by the Illinois General Assembly as found generally in the Illinois Public Utilities Act (220 ILCS 5/1-101 *et seq*.), and particularly in Section 13-801 (220 ILCS 5/13-801).

II. PROCEDURAL HISTORY

On October 3, 2012, SprintCom, Inc., Wireless Co, L.P., NPCR, Inc. d/b/a Nextel Partners and Nextel West Corp. ("Sprint") filed a Petition for Arbitration ("Petition") before the Illinois Commerce Commission for arbitration of certain terms, conditions, and prices for interconnection and related arrangements with Illinois Bell Telephone Company d/b/a AT&T Illinois ("AT&T Illinois" or "AT&T"). Sprint's Petition was filed pursuant to Section 252(b) of the Federal Telecommunications Act of 1996, and pursuant to the Arbitration Procedures in the Illinois Administrative Procedures Act. 47 U.S.C.A. § 252(b) (West 2012); 83 Ill. Admin. Code § 761 (2012). Sprint filed with its Petition a list of the unresolved issues, including the positions of Sprint and AT&T

Illinois, to the extent they were known, on each of those issues. At the time the Petition was filed, pursuant to Section 252(b)(4) of the Act, the arbitration was to be concluded on or about January 28, 2013. Petition at 7; 47 U.S.C.A. § 252(b)(4).

On October 17, 2012, Sprint filed an Errata which indicated that certain issues had been resolved between Sprint and AT&T Illinois and made some corrections to the original Decision Point List ("DPL"). At an initial status hearing on Oct. 25, 2012, Sprint and AT&T Illinois agreed to waive the deadlines provided in the statute, and set dates for the pre-hearing schedule. *Tr.* at 6-8.

On October 29, 2012, AT&T Illinois filed its Response to Petition for Arbitration. In its Response, AT&T Illinois indicated certain issues had been resolved. On November 7, 2012, AT&T Illinois filed a Motion to Set Post-Hearing Schedule requesting the Administrative Law Judges ("ALJs") set a schedule resulting in a Commission Order by June 28, 2013. On November 13, 2012, Sprint opposed AT&T Illinois' Motion to Set Post-Hearing Schedule as setting a schedule that was too long, and suggested the end-date for the arbitration should be April 28, 2013. Also on November 13, 2012, Sprint filed a Motion for Entry of an Agreed Protective Order. On November 16, 2012, Sprint filed a Stipulation, signed by both Sprint and AT&T Illinois, setting the end-date for the arbitration on June 28, 2013, and waiving the statutory requirement that the Commission conclude this proceeding not later than nine months after the date on which the local exchange carrier ("LEC") received the request for negotiation under Section 252 of the Act. On December 4, 2012, the ALJs set a post-hearing schedule, and granted the Motion for Entry of an Agreed Protective Order.

On December 5, 2012, AT&T Illinois and Sprint filed their respective Direct Testimony. On January 15, 2013, Staff filed its Direct Testimony. On February 13, 2013, AT&T Illinois and Sprint filed their respective Rebuttal Testimony. On February 26-28, the testimony of the witnesses of Sprint, AT&T Illinois, and Staff were entered into the record, and the witnesses were cross-examined at evidentiary hearings. On February 26, 2013, Sprint filed Corrected Directed Testimony, cross exhibits, and a redirect exhibit, and AT&T Illinois filed a cross exhibit. On February 27, 2013, AT&T Illinois filed Corrected Rebuttal Testimony and a cross exhibit. Also on February 27, 2013, Sprint filed cross exhibits. On March 8, 2013, Sprint filed a Motion to Modify the Briefing Schedule and requesting a one-day extension for the Initial Brief, Reply Brief, and Position Statement deadlines. On March 12, 2013, the ALJs granted Sprint's Motion to Modify the Briefing Schedule, resulting in Initial Briefs due on March 22, 2013, Reply Briefs due on April 2, 2013, and Position Statements due on April 8, 2013.

At various times before the evidentiary hearings were held, AT&T Illinois and Sprint resolved certain issues which had originally been presented to the Commission for arbitration. The resolved issues are Issues 1(b), 2, 3, 4, 9, 10, 12, 14, 23, 24(a), 25, 26, 27, 28, 29 (Section 4.8.9 from Issue 29 was added to Issue 30), 31, 32, 33, 34, 35, 38, 42, 48, 54, 55 (General Terms and Conditions ("GT&C") 10.10 from Issue 55 was added to Issue 53), 56, 59, 61, 62, 63, 64, 65, 66, 67, 68, and 69.

III. USE OF INTERCONNECTION FACILITIES

ISSUES 19 AND 20

AT&T Illinois Description of Issue 19: Should the definition of "Interconnection Facilities" reference the FCC's definition of "Interconnection" in 47 C.F.R. § 51.5?

Sprint Description of Issue 19: What are the appropriate definitions of "Interconnection Facilities"?

AT&T Illinois Description of Issue 20(a): Should the ICA state that the Interconnection Facilities available to Sprint at TELRIC prices be limited to those facilities used "solely" for section 251(c)(2) interconnection?

AT&T Illinois Description of Issue 20(b): Should the ICA provide that Interconnection Facilities purchased at TELRIC rates may not be used for 911 and Equal Access trunks?

Sprint Description of Issue 20: What is the appropriate use of Interconnection Facilities provided by AT&T?

Staff recommends that the Commission adopt AT&T Illinois' proposed language under Issues 19 and 20. Staff Exhibit 2.0 at 52-53. As Staff observes, there are two distinct but related issues underlying the disputed language in GT&Cs Section 2.60 (Issue 19): (i) whether the term "Interconnection" as used in that section should have the same meaning as provided in 47 C.F.R. §51 (Issue 13), and (ii) whether the term "Interconnection Facilities" as defined should mean entrance facilities used exclusively for Interconnection. *Id.* at 35. The U.S. Supreme Court, FCC and Commission have all explicitly stated that an incumbent LEC's obligation to provide cost-based interconnection facilities under Section 251(c)(2) is limited to entrance facilities used exclusively or solely for interconnection under Section 251(c)(2). *Id.*at 41-42*;* In the Matter of Unbundled Access to Network Elements, 20 FCCR 233 (2005) ¶ 140; Talk America, Inc. v. Michigan Bell Telephone Co. d/b/a AT&T Michigan, 131 S.Ct. 2254 (2011) at 13 (*hereinafter*, "Talk America Decision"); Brief for the United States as Amicus Curiae Supporting Petitioners in the Talk America Decision, slip op. at 13; AT&T Illinois Cross Exam Ex. 1 at 13. It is thus appropriate to limit facilities eligible for cost-based rates under Section 251(c)(2) to entrance facilities used exclusively (or solely) for Section 251(c)(2) interconnection. Accordingly, AT&T's limiting phrase "exclusively"

and “solely” in GT&Cs Section 2.60 and Section 3.5.2 of the Network Interconnection Appendix of the Interconnection Agreement, respectively, is appropriate. Staff Ex. 2.0 at 52-53; DPL, Issue 20, AT&T Illinois Language.

Moreover, as the FCC has made abundantly clear, Section 251(c)(2) interconnection is for the mutual exchange of traffic between customers of the parties. Staff Ex. 2.0 at 49-50. E911 and equal access (or IXC) traffic is not traffic originated from or terminated to AT&T end user customers and thus not Section 251(c)(2) traffic. As such, neither type of traffic is eligible to ride on cost-based interconnection facilities provided under Section 251(c)(2). Staff Ex. 2.0 at 45-46 and 53. As the Commission has made clear in the MCI arbitration proceeding (Docket No. 04-0469), Sprint should be solely responsible for facilities carrying equal access as well as E911 traffic because these facilities are used by Sprint to provide service to its own customers. Staff Ex. 2.0 at 51-53.

Finally, Sprint’s proposed limiting language in Section 3.4 makes no sense or/and is superfluous, and should be rejected out of hand. *Id.* at 39-40,53. First, the term “such services” in the language “[w]hen Sprint obtains such services from AT&T Illinois” is vague and undefined. Second, the limiting language seems superfluous, unless there exist scenarios in which Sprint does not obtain “such services” from AT&T, but is still held solely responsible, including financially, for the facilities used to provide “such services” that Sprint does not obtain from AT&T. There is no evidence of that in the record. *Id.* at 39-40. Therefore, the Commission should resolve Issues 19 and 20 in AT&T’s favor, and reject the language proposed by Sprint and adopt the language proposed by AT&T, in GT&Cs Section 2.60 and Sections 3.3, 3.4, 3.5.2 and 3.5.3 of the

Network Interconnection Appendix of the Interconnection Agreement. DPL, Issue 20, AT&T Language.

ISSUE 21

Sprint Description of Issue 21: What provisions, if any, regarding Interconnection Facility Audits should be included in the Agreement?

AT&T Illinois Description of Issue 21: Should the ICA permit AT&T to obtain an independent audit of Sprint's use of Interconnection Facilities?

For Issue 21, AT&T Illinois proposes to include language that will allow AT&T Illinois to audit Sprint's use of Interconnection Facilities that Sprint leases from AT&T Illinois. DPL, Issue 21, AT&T Language. In contrast, Sprint proposes to rely on the agreement's Dispute Resolution procedures for resolving any dispute between the parties as to whether Sprint is using Interconnection Facilities that Sprint leases from AT&T Illinois in accordance with the terms and conditions of the Interconnection Agreement. DPL, Issue 21, Sprint Language.

The purpose of an Interconnection Agreement is to establish the rates, terms, and conditions that the parties will follow when interconnecting to one another. While it is expected that parties will follow all agreed to rates, terms, and conditions, such rates, terms, and conditions are only enforceable to the extent they are memorialized within the agreement. Although there is no reason to believe that Sprint will willfully use Interconnection Facilities for purposes other than those provided for within the Interconnection Agreement, the Interconnection Agreement should contain provisions that ensure facilities are used correctly. Allowing for audit provisions as suggested by AT&T Illinois provides for such assurance.

Audit provisions are necessary to provide assurance that Interconnection Facilities will be used properly because there can be incentives to use such facilities improperly, and absent audits, the ability to monitor compliance lies largely with the party that may not have an incentive to comply. In particular, to the extent that Interconnection Facilities that Sprint leases from AT&T Illinois at TELRIC rates are less costly than facilities that Sprint deploys itself or that Sprint leases from AT&T Illinois at special access or other non-TELRIC rates, Sprint may have little incentive to take proactive steps necessary to ensure the proper use of such leased facilities.

As noted by Dr. Zolnierek, a situation similar to this issue arose recently in a docketed proceeding concerning a dispute over the nature of traffic being delivered to AT&T Illinois from Halo Wireless, Inc. ("Halo"). Staff Ex. 1.0 at 44. In that case, a representative of the carrier Halo stated, with respect to traffic Halo was sending to AT&T Illinois form Halo's customer Transcom, "[m]ost of the calls probably did start on other networks before they came to Transcom for processing" and that "Halo is not in a position to determine where or on what network a call started, and we have not asked our customer." Halo, Complaint as to Violations of an Interconnection Agreement entered into under 47 U.S.C. §§ 251 and 252 and pursuant to Section 10-0108 of the Public Utilities Act, Pre-Filed Testimony of Russ Wiseman on Behalf of Halo Wireless, Inc., ICC Docket No. 12-0182 (May 15, 2012) at 32. While Sprint may be more proactive in assessing the characteristics of the traffic it sends over leased facilities, this example underscores that carriers are not always proactive in this regard. *See id.*

For these reasons, AT&T Illinois' proposal to include audit provisions within the contract should be adopted. *See* DPL, Issue 21, AT&T Illinois Language.

ISSUE 22

Sprint Description of Issue 22: If Interconnection Facility Audits provisions are included in the Agreement, how should disputes regarding Interconnection Facility Audits be resolved?

AT&T Illinois Description of Issue 22: If audit provisions are included in the ICA and an audit demonstrates Sprint is not compliant, how should Sprint's non-compliance be addressed?

For Issue 22, AT&T Illinois proposes language that provides for remedial actions in the event that an audit reveals that Sprint is not using Interconnection Facilities that Sprint leases from AT&T Illinois (at TELRIC rates) in accordance with the terms and conditions contained in the contract. DPL, Issue 22, AT&T Illinois Language. As with Issue 21, Sprint opposes the inclusion of specific audit provisions in the contract. DPL, Issue 22, Sprint Language.

AT&T Illinois proposed several remedial provisions. AT&T Illinois Ex. 1.0 at 30. AT&T Illinois proposes language, in Sections 3.5.5.5.1 and 3.5.5.5.6 of the Network Interconnection Appendix of the Interconnection Agreement, that requires all facilities, for which noncompliance is found, to be converted to equivalent or substantially similar wholesale services or be disconnected. DPL, Issue 22, AT&T Illinois Language. However, the Commission should reject these provisions because they are overly punitive in that they would force Sprint to convert or disconnect services even in cases where noncompliance is *de minimis* (for example, in cases where a single call was inappropriately routed over the facility on only one occasion). Staff Ex. 1.0 at 46.

In contrast, AT&T Illinois proposes other language, which Staff recommends the Commission accept, that allows AT&T Illinois to assess Sprint for noncompliance at rates that are as high as, and likely higher than, those Sprint would have paid had it

ordered circuits appropriate to the traffic types carried (i.e., the amount that AT&T Illinois would have billed Sprint had Sprint ordered the circuit from AT&T Illinois tariffs using the month-to-month rates), that include late payment charges, and that require Sprint to incur audit charges. DPL, Issue 22, AT&T Illinois Language; Staff Ex. 1.0 at 46. If this language is accepted, Sprint will be appropriately penalized for identified noncompliance without forced conversion or termination of the circuits. *See* DPL, Issue 22, AT&T Illinois Language. With these provisions in place, adding the language in Sections 3.5.5.5.1 and 3.5.5.5.6 of the Network Interconnection Appendix is unnecessary, particularly for minor compliance violations. *Id.*

In testimony, Staff recommended the Commission direct the parties to include language, to replace the language AT&T Illinois proposes for Sections 3.5.5.5.1 and 3.5.5.5.6 of the Network Interconnection Appendix of the Interconnection Agreement, which will reserve AT&T Illinois' right to propose, as an amendment to the Interconnection Agreement, additional penalty language, including its proposed conversion and/or discontinuance language, in the event that non-compliance is found by audits to be repeated or systematic. Staff Ex. 1.0 at 47. In rebuttal testimony, Ms. Pellerin stated that the contract language proposed by Dr. Zolnierek only permits annual audits and that identifying systematic or repeated noncompliance could take years. AT&T Illinois Ex. 1.1 at 31. Staff concedes this point, and agrees that this aspect of its proposal does not provide AT&T Illinois appropriate recourse in the event of significant noncompliance. Therefore, Staff amends its proposal and recommends that the Commission direct the parties to include language in the Interconnection Agreement which will reserve AT&T Illinois' right to propose, as an amendment to the

Interconnection Agreement, additional penalty language, including its proposed conversion and/or discontinuance language, in the event that significant non-compliance is found in any audit and that AT&T Illinois need not wait for repeated or systematic noncompliance. Staff further recommends that any disagreement as to what constitutes significant noncompliance should, if the parties cannot otherwise resolve such disagreement, be resolved by the Commission.

AT&T Illinois' proposal requiring Sprint to pay 100% of audit costs if the number of circuits found to be noncompliant is equal to 10% or more of the total number of circuits investigated is similarly overly punitive. Staff Ex. 1.0 at 47; *see* DPL, Issue 22, AT&T Illinois Language. As above, such a provision could force Sprint to pay substantial audit costs even in cases where noncompliance is *de minimis* (for example, in an audit of 10 facilities where at only one of the facilities a single call was inappropriately routed over the facility on only one occasion). Staff Ex. 1.0 at 47. Such a low bar could force Sprint to incur all costs for all audits, and could incent AT&T Illinois to conduct overly frequent and unnecessary audits. *See id.* The Commission should require AT&T Illinois to revise its language in Section 3.5.5.5.3 of the Network Interconnection Appendix of the Interconnection Agreement to reflect that Sprint only be required to pay for the cost of the audit based on the pro-rata portion of the number of circuits found by the auditor to be non-compliant compared to the total number of circuits, which were the subject of the audit. DPL, Issue 22, AT&T Language.

In rebuttal testimony, Ms. Pellerin argues that, with respect to audit costs, Staff's proposed recommendation would err in the other extreme by insufficiently sanctioning Sprint for substantial noncompliance. AT&T Illinois Ex. 1.1 at 34-35. Staff agrees that,

while AT&T Illinois' language has the potential to be overly punitive for *de minimis* violations, Staff's proposal may be insufficient to provide recourse for instances where noncompliance is widespread. Therefore, Staff amends its proposal. Staff continues to recommend that Commission should require AT&T Illinois to revise its language in Section 3.5.5.5.3 of the Network Interconnection Appendix of the Interconnection Agreement to reflect that Sprint only be required to pay for the cost of the audit based on the pro-rata portion of number of circuits found by the auditor to be non-compliant compared to the total number of circuits, which were the subject of the audit. Staff, however, further recommends that the Commission direct the parties to include language in the Interconnection Agreement which permits AT&T Illinois to seek further recovery, beyond the pro-rate proportions, in the event that significant non-compliance is found in any audit. As the examples and counter examples referred to above demonstrate, whether or not non-compliance is significant will likely be circumstance specific. Staff's proposal would allow AT&T Illinois to seek additional recourse beyond the pro-rata allocations of audit costs, in cases where it perceives non-compliance to be significant, but would place some burden on AT&T Illinois to demonstrate that non-compliance is more than *de minimis*. Any disagreement as what constitutes significant noncompliance should, if the parties cannot otherwise resolve such disagreement, be resolved by the Commission.

ISSUE 24

> *AT&T Illinois Description of Issue 24(b): Under what circumstances may Sprint use Combined Trunk Groups?*
>
> *Sprint Description of Issue 24: Should Sprint be required to establish separate Type 2A Equal Access Trunk Groups?*

The central issue under Issue 24 is the flip side of Issue 20, but more narrow in scope. Issue 20 addresses the scope of AT&T's obligation under Section 251(c)(2) to provide facilities at cost-based rates, or more precisely, whether AT&T's duty to provide cost-based facilities is limited to facilities used exclusively for Section 251(c)(2) interconnection. The dispute under Issue 24 is whether Sprint may carry equal access (or IntereXchange Carrier ("IXC")) traffic on cost-based interconnection facilities provided under Section 251(c)(2). Staff Ex. 2.0 at 54-55. As discussed under Issues 19 and 20, IXC traffic is not traffic originated from or terminated to AT&T's end user customers, and thus is not Section 251(c)(2) traffic. So, IXC traffic is not eligible to ride facilities obtained at cost-based rates under Section 251(c)(2). Staff Ex 2.0 at 53 and 55. If Sprint elects to carry Section 251(c)(2) traffic and non-Section 251(c)(2) traffic (e.g., IXC traffic) over the same facilities, then Sprint is not entitled to obtain facilities at cost-based rates under Section 251(c)(2) to carry such combined traffic. *Id.* at 64. Therefore, Staff recommends that the Commission resolve this issue in favor of AT&T and reject Sprint proposed language, and adopt AT&T proposed language, under Issue 24 (i.e., in Sections 4.2.3, 4.2.4 and 4.2.4.1of the Network Interconnection Appendix of the Interconnection Agreement). *Id.*

Contrary to Sprint Witness Mr. Felton's assertions, Sprint Ex. 5.0 at 6, Dr. Liu is not sanctioning the discriminatory treatment of Sprint vis-à-vis rural LECs with her position that Sprint is not entitled to carry IXC traffic on cost-based interconnection facilities obtained under Section 251(c)(2). Whether Sprint insists on calling AT&T a joint exchange access provider has no bearing on the validity of the assertion that Sprint has the right to carry traffic between its end user customers and IXCs on cost-based

interconnection facilities obtained under Section 251(c)(2). Traffic between Sprint's end user customers and IXCs is not traffic originated from or terminated to AT&T's end user customers, and thus not Section 251(c)(2) traffic. In support of his position, Mr. Felton quotes an order of the FCC, First Report and Order ¶ 184. Sprint Ex. 5.0 at 28. Mr. Felton admits, however, that the support to which his testimony cited on this point does not reference joint access providers or jointly provided exchange access. *Tr.* at 149.

ISSUE 29 (CARRYOVER)/30/30(a)/30(b)

> *Staff Description of Issue 29 Carryover: The Parties resolved the majority of issue 29, but did not resolve whether AT&T Illinois' proposed language in 4.8.9 should be included in the agreement. The parties proposed to include this remaining part of Issue 29 with Issue 30.*
>
> *Sprint Description of Issue 30: Should AT&T's language regarding routing of Exchange Access Service Traffic be included in the Agreement?*
>
> *AT&T Illinois Description of Issue 30(a): Should InterMTA Traffic be routed and 1058 billed in accordance with Feature Group D?*
>
> *AT&T Illinois Description of Issue 30(b): Should the ICA state that the parties will abide by the Ordering and Billing Forum's guidelines regarding JIP?*

Issue 30 contains two separable classes of IXC related issues. First, it contains issues which concern traffic between AT&T Illinois and IXCs in which Sprint is inserted into the call path between AT&T Illinois and the IXCs. Staff refers to these parts of Issue 30 as the Switched Access Charge Issues. The second part of Issue 30 concerns instances when traffic is exchanged between IXCs and Sprint, and Sprint seeks to use AT&T Illinois facilities for such connections. Staff refers to these parts of Issue 30 as the Exchange Access Issues.

Switched Access Charge Issues

In the FCC's CAF Order, the FCC addressed a dispute regarding interpretation of its IntraMTA rule; the ruling stated that calls between a LEC and a CMRS provider that originate and terminate within the same Major Trading Area ("MTA") at the time that the call is initiated are subject to reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access charges. *CAF Order at ¶ 1003-1006.* In particular, the dispute concerned Halo's practice of accepting traffic from other providers (originated by callers served by of other providers), re-originating that traffic within an MTA, and delivering the traffic to LECs in the MTA so that it appears to be IntraMTA traffic. *Id.* While the FCC did not specifically address whether some of this traffic might be sent to Halo, either directly or indirectly, from an IXC, it is certainly conceivable that such traffic could have been delivered to Halo (or, in this case, Sprint) directly or indirectly from an IXC, and then delivered to AT&T Illinois for termination to its end user customer. In fact, when these issues were presented to this Commission in a case involving Halo, Halo indicated that it could not and/or did not take steps to identify the types of providers sending traffic to Halo for ultimate termination on AT&T Illinois network. Halo, Complaint as to Violations of an Interconnection Agreement entered into under 47 U.S.C. §§ 251 and 252 and pursuant to Section 10-0108 of the Public Utilities Act, Pre-Filed Testimony of Russ Wiseman on Behalf of Halo Wireless, Inc., ICC Docket No. 12-0182 (May 15, 2012) at 32. The Halo situation provides an example of how it is conceivable that, if permitted pursuant to the Interconnection Agreement, Sprint could accept traffic from an IXC and deliver it AT&T Illinois. *Id.*

Furthermore, if Sprint were to inject itself into the call path between an IXC and AT&T Illinois, and deliver such traffic over Interconnection Trunks rather than Switched

Access Service Trunks under this ICA, then Sprint would be able to avoid certain switched access charges (e.g., Entrance Facilities charges) that would otherwise be appropriate. *See* ILL. C.C. No. 21, Original Page 121.1. Dr. Zolnierek indicated in his testimony that if Sprint were allowed to do this, then he would expect that all IXCs would quickly move to either establish Interconnection Trunks or contract to use Sprint's (or any similarly situated carrier's) Interconnection Trunks to avoid switched access charges. Staff Ex. 1.0 at 52. This outcome would be counter to the spirit of the FCC's CAF Order because it would result in a relatively immediate elimination of certain access charges when the FCC CAF Order created a transition period. *Federal Communications Commission, In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up Universal Service Reform – Mobility Fund, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92. CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Second Order on Reconsideration ("CAF Order"), (April 25, 2012) at ¶¶ 809, 810.*

Moreover, the FCC has long restricted the ability of carriers to obtain 251(c)(2) interconnection for interexchange purposes. Federal Communications Commission, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 96-98 and CC Docket No. 95-185, First Report and Order, (August 8, 1996) ("Local Competition First Report

and Order") at ¶¶ 190-191. Nothing in the CAF Order or any other Order would remove these restrictions and permit Sprint to use 251(c)(2) interconnection trunks acquired from AT&T Illinois priced at TELRIC for interexchange purposes. *Id.*

Instead, if Sprint wants to accept traffic from an IXC and deliver interexchange traffic to AT&T Illinois for termination, then Sprint should deliver such traffic to AT&T Illinois pursuant to AT&T Illinois switched access tariffs and pay switched access charges in accordance with the transitional switched access regime established in the FCC's CAF Order. Staff Ex. 1.0 at 53. Sprint should not be permitted to use facilities it acquires from AT&T Illinois to deliver switched access traffic and avoid the transitory switched access regime established by the FCC. *Id.* Allowing otherwise would impair AT&T Illinois' ability to bill IXC for appropriate access charges. *Id.* at 61.

Separately, AT&T Illinois should be allowed to route InterMTA traffic destined for CMRS end users over Interconnection Trunks when that traffic appears to be IntraMTA traffic, provided appropriate Originating InterMTA factors are applied to the Interconnection Trunks for billing purposes. *Id.* at 53. Although AT&T Illinois' proposed language on this topic appears discriminatory, AT&T Illinois has clarified that "the majority of non-IntraMTA (i.e., InterMTA) traffic from AT&T Illinois to Sprint is routed over access facilities to the customers' selected IXCs. . . [and] . . .section 4.10.5 is intended for the situation in which a call appears to be an IntraMTA call (based on the calling and called parties' telephone numbers), when in fact the call is InterMTA because, for example, the called party has roamed out of the MTA associated with his/her telephone number." Staff Ex. 1.2. Thus, AT&T Illinois is seeking the ability to

route InterMTA traffic over Interconnection Trunks when that traffic appears to be IntraMTA traffic. *Id.*

Sprint, however, need not be given the same opportunity to deliver InterMTA traffic over Interconnection Trunks when traffic appears to be IntraMTA traffic. Staff Ex. 1.0 at 55. Sprint would, to Dr. Zolnierek's knowledge, know whether calls are IntraMTA or InterMTA calls, and would not face the situation of sending calls to AT&T Illinois that appear to Sprint to be IntraMTA, but are, in fact, InterMTA calls. *Id.* Therefore, at least upon Staff's current understanding, it does not appear to be necessary to allow Sprint to pass InterMTA calls over Interconnection Trunks. *Id.*

Exchange Access Issues

Section 4.10.3.1 of the Network Interconnection Attachment of the ICA concerns traffic that is exchanged between Sprint and an IXC through an AT&T Illinois Access or local/Access Tandem. Sprint proposes language, in Sections 4.10.3.1 that would restrict traffic that the parties agree should be routed over Equal Access Trunks to "Switched Access Service" as defined by Sprint. DPL, Issue 30, Sprint Language.

Staff does not find Sprint's proposed inclusion of the term "Switched Access Service" in Section 4.10.3.1 to be appropriate, and recommends that the Commission adopt AT&T Illinois' proposed language with regard to this issue. Staff Ex. 1.0 at 57-58. Specifically, the definition of Switched Access Service proposed by Sprint specifies that it is an offering "to an IXC . . . by AT&T Illinois." ICA, GT&C, Section 2.104. When Sprint is sending traffic from its end users to IXCs or receiving traffic from IXCs destined for its end users, it is Sprint, making use of AT&T Illinois facilities, that is providing access service to IXCs, not AT&T Illinois. Staff Ex. 1.0 at 57. When a local exchange carrier

offers exchange access to an IXC, it takes interexchange traffic from the IXC and delivers it to its end user customer (or, alternatively, takes traffic from its end user customer and delivers it to the IXC). *Id.*at 61-62. In some cases, a carrier may not have all the facilities necessary to deliver traffic from the point where the IXC hands of the local exchange traffic all the way to the carrier's own customer (or, alternatively, to deliver traffic all the way from its end user to where it hands the traffic to an IXC). *Id.* at 62. In that case, a carrier may need to obtain third party facilities in order for it to provide exchange access to IXCs. *Id.* As Staff understands it, Sprint is seeking the right to use AT&T Illinois' facilities under this agreement in instances when Sprint does not have all the facilities necessary to connect directly to IXCs (i.e., doesn't have all the facilities necessary to provide exchange access). *Id.*

Sprint's acquisition of facilities from AT&T Illinois in order to bridge the gap between Sprint and IXCs thereby permitting Sprint to offer exchange access to IXCs is very different than what Sprint is proposing when it inserts itself into the call path between IXCs and AT&T Illinois. *Id.* In such cases, AT&T Illinois is not seeking Sprint facilities to fill any gap in its own exchange access network. *Id.* In fact, Sprint would actually use AT&T Illinois facilities for its portion of what Mr. Felton terms "jointly provided access." *Id.* Sprint would, under its proposal, simply lease these facilities from AT&T Illinois at rates it is entitled to for purposes of interconnection of its customers with AT&T Illinois' customers and use the facilities for connecting IXC traffic to AT&T Illinois customers, thereby using AT&T Illinois' facilities for switched access while avoiding AT&T Illinois' switched access charges. *Id.* To be clear, this is not, in Staff's opinion, jointly provided access, but rather arbitrage inconsistent with FCC rate prescriptions,

which do not permit carriers to use interconnection facilities priced at TELRIC rates to avoid switched access charges. *Id.* at 63.

Both parties also include qualifying language regarding the routing: Sprint's proposed language being "that Sprint elects to route to or receive from" and AT&T Illinois' proposed language being "destined to be routed to, or that has been routed from." DPL, Issue 30, Sprint Language; DPL, Issue 30, AT&T Illinois Language. As to whether the Commission should include either parties' proposed language in Section 4.10.3.1, Staff believes both proposals contain ambiguity. Staff Ex. 1.0 at 58. Sprint's use of the phrase "that Sprint elects to" and AT&T Illinois' use of the phrase "destined to be routed to" both presuppose a knowledge of the intent of a party rather than actual observed behavior. DPL, Issue 30, AT&T Illinois Language; DPL, Issue 30, Sprint Language. Rather than adopting either proposal, Staff recommends that these ambiguous phrases be rejected, and that the Commission instead direct the parties to include the language "routed to or routed from." Staff Ex. 1.0 at 58.

Each party also offers additional unsupported language. Sprint proposes to specify that separate trunk groups will be used when AT&T Illinois in not able to record Sprint-originated traffic to an IXC. DPL, Issue 30, Sprint Language. AT&T Illinois proposes to specify that Sprint is solely responsible for all costs where a separate Equal Access Trunk Group is established. DPL, Issue 30, AT&T Illinois Language. Apart from an apparent inherent preference for their own versions, it is not clear what disagreement the parties have with each of their respective language proposals with respect to these passages. Staff Ex. 1.0 at 56. Staff recommends the Commission adopt both Sprint's and AT&T Illinois' respective proposals: first, to specify that separate trunk groups will

be used when AT&T Illinois is not able to record Sprint-originated traffic to an IXC, and second, to specify that Sprint is solely responsible for all costs where a separate Equal Access Trunk Group is established. *Id.* at 59.

Finally, AT&T Illinois proposes that the parties agree to abide by the Ordering and Billing Forum ("OBF" or "OBF Resolution"), which Sprint opposes. *Id.* Staff does not recommend the Commission require Sprint to abide by the OBF Resolution. *Id.* at 60. While AT&T Illinois' proposal may cause Sprint to include certain information, specifically the Jurisdictional Information Parameter ("JIP"), in call data records that would assist AT&T Illinois in identifying the jurisdictional nature of a call as either InterMTA or IntraMTA (which could be help ensure traffic is being appropriately routed and rated under the contract), both the feasibility, and cost to Sprint, of including such information in the call data as required by the OBF resolution cannot yet be addressed. *Id.* at 59. The OBF Resolution has not been finalized as of this time, as far as Staff is aware. *Id.* Without knowing what the requirements would entail, Staff cannot weigh the benefits against the costs of doing so, and therefore, does not recommend the Commission require Sprint to abide by the OBF Resolution. *Id.* at 60.

IV. POINT OF INTERCONNECTION

ISSUE 16

AT&T Illinois Description of Issue 16: Must Sprint obtain AT&T's consent to Sprint's removal of a previously established POI?

Sprint Description of Issue 16: Must Sprint obtain AT&T's consent to Sprint's designation of a POI at a technically feasible location on AT&T's network or Sprint's removal of a previously established POI?

Staff recommends that the Commission reject Sprint's proposed language in Section 2.2.1.4 of the Network Interconnection Appendix of the Interconnection

Agreement. Staff Ex 2.0 at 28-29; *see* DPL, Issue 16, Sprint Language. Staff's recommendation is consistent with the Commission's *Arbitration Decision* in MCI Metro Access Transmission Services, Inc., MCI WorldCom Communications, Inc., and Intermedia Communications Inc., Petition for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangements with Illinois Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996, ICC Docket No. 04-0469 (November 30, 2004) ("MCI Arb. Decision"), requiring that a carrier either reach an agreement with its interconnecting partner or obtain Commission approval before decommissioning an existing point of interconnection ("POI"). MCI Arb. Decision at 88-89. Sprint asserts that its right to establish interconnection at any point on AT&T's network entitles it to decommission existing POIs, at its own discretion, an argument put forth by MCI and dismissed by the Commission. Staff Ex. 2.0 at 25-26, 28. Staff sees no reason for the Commission to depart from its prior holding on this issue. Thus, Staff recommends that the Commission resolve this issue in favor of AT&T, and reject Sprint's proposed language in Attachment 2 Section 2.2.1.4. Staff Exhibit 2.0 at 28-29.

Sprint witness Mr. Felton is incorrect when he states that Staff is inconsistent in its position on decommissioning existing POIs and establishing new POIs. Sprint Ex. 5.0 at 45. As Staff witness Dr. Liu testified, Section 251(c)(2) of the Act does not address dismantling, managing, or maintaining an existing interconnection. Staff Ex. 2.0 at 26. It is Mr. Felton who puts his own spin on the statute when he suggests that without reading into the statute the right to decommission existing POIs, that carrier is effectively denied its right to interconnect. Dr. Liu explained in her testimony that no statute or regulation grants Sprint the right to dismantle any existing interconnection at

its own discretion. Staff Ex. 2.0 at 26.

ISSUE 17

AT&T Illinois Description of Issue 17(a): Should Sprint be required to establish additional Points of Interconnection (POIs) when its traffic to an AT&T Tandem Serving Area exceeds 24 DS1s?

AT&T Illinois Description of
Issue 17(b): Should Sprint be required to establish an additional Point of Interconnection (POI) at an AT&T end office not served by an AT&T tandem when its traffic to that end office exceeds 24 DS1s?

AT&T Illinois Description of Issue 17(c): Should Sprint establish these additional connections within 90 days?

Sprint Description of Issue 17: Should Sprint be required to establish additional Points of Interconnection (POIs) when its traffic to an AT&T Tandem Serving Area exceeds 24 DS1s?

Staff recommends that the Commission reaffirm its holding in Docket No. 00-0332 and adopt AT&T's proposed language under Issue 17, (i.e., in Attachment 2 Section 2.2.1.3, 2.2.1.3.1, 2.2.1.3.2, and 2.2.1.3.3) but with the traffic threshold set at OC-12, instead of 24 DS1s as proposed by AT&T. Staff Exhibit 2.0 at 33-34. The Commission should balance the incumbent LEC's need and ability to protect its network from adverse impacts (such as network or tandem exhaust) and the need not to unduly burden interconnecting carriers. In Docket 00-0332, the Commission determined that OC-12, which is the equivalent of 336 DS1s or 12 DS3, is the appropriate traffic threshold at which additional POIs should be established. Level 3 Communications, Inc., Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, Arbitration Decision, ICC Docket No. 00-0332 (Aug. 30, 2000) ("Level 3 Arb. Decision") at 31. AT&T has not presented sufficient evidence to warrant a departure from the Commission's holding or a decrease in the traffic

threshold from OC-12 (or 336 DS1s) to 24 DS1s for additional POIs. *Id.* Therefore, Staff recommends that the Commission reaffirm its finding in Docket No. 00-0332 and adopt AT&T proposed language under Issue 17, (i.e., in Attachment 2 Section 2.2.1.3, 2.2.1.3.1, 2.2.1.3.2, and 2.2.1.3.3) but with the traffic threshold set at OC-12, instead of 24 DS1s.

V. INTERCONNECTION FACILITY PRICING AND SHARING

ISSUE 44

AT&T Illinois Description of Issue 44: Should the ICA provide that Sprint is automatically entitled, as of the Effective Date of the ICA, to TELRIC based pricing on facilities ordered from AT&T's access tariff?

Sprint Description of Issue 44: Should Interconnection Facilities provided by AT&T be priced at cost based (i.e. TELRIC) rates?

Staff recommends that the Commission resolve this issue in favor of AT&T and reject Sprint's proposed language for Attachment 2 Sections 3.8 and 3.8.3 of the interconnection agreement ("ICA"). Staff Ex. 2.0 at 70. Under the Supreme Court's decision, Sprint has the right to obtain Section 251(c)(2) interconnection facilities at cost-based rates pursuant to the parties' ICA. But, to avail itself of cost-based rates, Sprint must terminate its lease of interconnection facilities from the access tariff pursuant to the provisions of the tariff and order interconnection facilities pursuant to the ICA. Sprint simply cannot demand cost-based rates for transmission facilities ordered from the access tariff. Transmission facilities, for interconnection or otherwise, ordered from the access tariff are subject to the rates, terms and conditions of the tariff. Staff Ex. 2.0 at 65-67. Accordingly, Sprint's proposed language in Attachment 2 Sections 3.8 and 3.8.3 should be rejected. Staff Ex. 2.0 at 70.

ISSUE 45

AT&T Illinois Description of Issue 45(a): Should the Interconnection Facilities prices be applied on a "DS1/DS1 equivalents basis"?

AT&T Illinois Description of Issue 45(b): Should the ICA reference specific Commission orders for Interconnection Facilities pricing?

AT&T Illinois Description of Issue 45(c): Should Sprint be entitled to different rates for Interconnection Facilities than those set forth in the Price Sheet without amending the ICA?

Sprint Description of Issue 45: If the answer to V.D.(1) is yes, should Sprint's proposed language governing Interconnection Facilities/Arrangements and rates be included in the Agreement?

First, Staff recommends that the Commission reject Sprint's proposed DS1/DS1 equivalent pricing standard in Attachment 2 Sections 3.8.2. Staff Ex. 2.0 at 74. Staff explains that the Commission has specifically established TELRIC prices for DS1 and DS3 transport. The Commission's DS1 TELRIC price is not contingent on whether the carrier also purchases a DS1 transport facility that is not eligible for TELRIC pricing treatment (e.g., from access tariff). Staff Ex. 2.0 at 73. Staff observes that, under Sprint's DS1/DS1 equivalent pricing standard, Sprint does not pay the DS1 TELRIC rate established by the Commission when purchasing a DS1 facility, but rather, a lower, prorated DS3 TELRIC rate established by the Commission for DS3 transmission facility. Staff Ex. 2.0 at 71-72. Sprint's DS1/DS1 equivalent pricing standard has the effect of forcing AT&T to provide DS1 interconnection facilities at below-cost rates established by the Commission for a DS1 transmission facility, and therefore, should be rejected. *Id.* at 72.

In addition, Staff recommends that the Commission reject Sprint's proposed language in Attachment 2 Section 3.8.2.2, which allows it to avail itself of cost-based rates established in future Commission proceedings without amendment to the parties'

ICA. *Id.* at 74. Staff opines that an interconnection agreement is a binding contract that specifies the rates, terms and conditions for services provisioned under the contract. Accordingly, neither party should be automatically entitled to different rates without amending the parties' ICA. Staff Ex. 2.0 at 73.

Furthermore, Staff recommends that the Commission reject Sprint's proposed language for Attachment 2 Section 3.8.2.1. Staff Ex. 2.0 at 74. Sprint's proposed language in Section 3.8.2.1 specifies that the rates for interconnection facilities will be in the Pricing Sheets of the ICA, and are the same TELRIC rates established by the Commission in Docket Nos. 96-0569 and 96-0486. In Staff's view, the purpose of Sprint's proposed language in Section 3.8.2.1 is to distinguish the rates in the Pricing Sheets from any cost-based rates that the Commission may establish in future Commission proceedings. Consistent with Staff' position on Sprint's proposed language in Section 3.8.2.2, the Commission should similarly reject Sprint proposed language for Section 3.8.2.1 of Attachment 2. Staff Ex. 2.0 at 74.

ISSUES 15, 46, AND 47

> *AT&T Illinois Description of Issue 15: Should the POI serve as both the physical and financial demarcation point between the parties' networks?*
>
> *Sprint Description of Issue 15: What is the appropriate definition of the "Point of Interconnection"?*
>
> *AT&T Illinois Description of Issue 46: Should the parties share the cost of TELRIC priced facilities on Sprint's side of the POI? Sprint Description of Issue 46: Should Interconnection Facilities cost be equally shared (50/50 basis)? AT&T Illinois Description of Issue 47: Should Attachment 2 contain billing terms specific to Interconnection Facilities?*
>
> *Sprint Description of Issue 47: Should the Billing Party discount the invoice for Interconnection Facilities by fifty (50%) to reflect an equal sharing of the costs?*

Staff observes that the central issue between parties under Issues 15, 46 and 47 is the allocation of financial responsibility for facilities on the respective parties' sides of the POI. The facilities in question appear to be transmission facilities linking Sprint's network to the POI on the AT&T network (i.e., Sprint's interconnection facilities). Staff Ex 2.0 at 11. The Commission has repeatedly made the determination that each party should be financially and physically responsible for facilities on its side of the POI. *Id.* at 12-13. Staff sees no reason for the Commission to depart from its prior decisions on this issue. As such, the Commission should reaffirm the finding that each party should be financially and physically responsible for facilities on its side of the POI. *Id.* at 20. Staff recommends that the following definition of POI, which reflects AT&T's definition of POI (Issue 15) with a minor modification, be incorporated into the parties' Interconnection Agreement:

> GTCs Section 2.88:
>
> "Point of Interconnection" ("POI") *is* a point on the AT&T ILLINOIS network *where Sprint physically links its network with the AT&T ILLINOIS network for the mutual exchange of traffic*. Each Party is physically and financially responsible *for facilities on its side of the POI*.

Staff Ex 2.0 at 20 (Italics added).

Furthermore, Staff notes that Sprint proposed language for Issues 46 and 47 (i.e., in Attachment 2 Sections 3.9, 3.9.1, 3.9.2, 3.9.3, 3.9.3.1 and Pricing Schedule Sections 1.3.2, 1.3.3, 1.4.2) would require AT&T to be financially responsible for facilities on Sprint's side of the POI. *Id.* at 10-11. Sprint's proposal is inconsistent with the above definition of POI and the Commission's past decisions. Thus, Staff recommends that the Commission reject Sprint's proposed language in Attachment 2 Sections 3.9, 3.9.1, 3.9.2, 3.9.3, 3.9.3.1 and in Pricing Schedule Sections 1.3.2, 1.3.3,

1.4.2 (Issues 46 and 47). *Id.* at 20.

ISSUE 49

> *AT&T Illinois Description of Issue 49(a): Should the ICA include AT&T's language to address the interim period between the Effective Date and the implementation of the section 251(c)(2) interconnection arrangements set forth in Attachment 2?*
>
> *AT&T Illinois Description of Issue 49(b): What rates, terms and conditions should apply to convert from the existing interconnection arrangement to the 251(c)(2) interconnection arrangement?*
>
> *Sprint Description of Issue 49: Should AT&T require Sprint to issue ASRs and be allowed to charge Sprint for any billing reclassifications or changes to the existing interconnection arrangements to receive TELRIC-based rates?*

In Staff's opinion, there are four issues associated with the conversion of the parties' existing interconnection arrangement to a Section 251(c)(2) interconnection arrangement: (i) whether it is necessary to establish contract provisions governing the interim period, if any, during which the parties' existing interconnection arrangement is being transformed or groomed into a Section 251(c)(2) interconnection arrangement; (ii) whether the conversion of special access services or facilities purchased from the tariff at tariffed rates to interconnection facilities purchased from the ICA at cost-based rates constitutes a termination of service as defined in the tariff, and thus, is subject to termination liabilities as provided in the tariff; (iii) whether AT&T is entitled to impose on Sprint non-recurring charges for work performed for the conversion or whether the conversion should be a non-chargeable event to Sprint; and (iv) whether Sprint must formally request the conversion, via the access service request process, in order to initiate the conversion process. Staff Ex. 2.0 at 79-80.

First, Staff agrees with AT&T that it is necessary to establish interim provisions to govern the transition period. AT&T's language maintaining the status quo during the

transition period appears to be the natural option and thus should be adopted. *Id.*at 89-90,92. Staff recommends that the Commission adopt AT&T proposed language in GT&Cs Section 2.99 and Attachment 2 Section 1.2, including all subsections.

Moreover, Sprint is the cost-causer for the conversion of the parties' existing interconnection arrangement to a Section 251(c)(2) interconnection arrangement, and it has not provided any valid reasons why it should not be liable for non-recurring charges and termination liability associated with the conversion. Staff Ex. 2.0 at 92. As AT&T pointed out, Sprint's proposed language in Attachment 2 Sections 3.8.3 and 3.8.4 would require AT&T to perform all necessary transition work at no charge to Sprint and would prohibit AT&T from charging for "rearrangement, reconfiguration, disconnection, termination or other non-recurring fees." AT&T Ex. 1.0 at 13-14;DPL, Issue 49, Sprint Language. Consistent with the Commission's prior findings in Docket Nos. 00-0332 and 05-0442 and the Appellate Court decision in Globalcom, Inc. v. Illinois Commerce Commission, 347 Ill. App. 3d at 19-21 (1st Dist. 2004), the Commission should find that Sprint is responsible for non-recurring charges for work performed for the conversion as well as for termination liabilities for the termination of special access services from the access tariff. Staff Ex. 2.0 at 86, 87, 92-93. Accordingly, the Commission should reject Sprint's proposed language Attachment 2 Sections 3.8.3 and 3.8.4. *Id.* In addition, as in Docket No. 05-0442, the Commission should also make clear that AT&T may not impose any non-recurring charges or termination liabilities on Sprint for the conversion that have not been approved by the Commission or the FCC and/or agreed to by the parties. Staff Ex. 2.0 at 92-93.

Finally, Sprint contends that it should not be required to submit access service

requests for the conversion. Sprint Ex. 3.0 at 48. Sprint, however, does not provide any valid arguments to support its contention. Staff Ex. 2.0 at 90. Contrary to Sprint's contention, the conversion is not a simple price update on (or re-pricing of) the same existing purchases. Instead, the conversion involves physical rearrangement of facilities and new purchases of facilities from the ICA as well as termination of existing purchases of special access services from the tariff. *Id.* at 91-92. Thus, Sprint should be required to issue access service requests for the conversion (and be responsible for all costs associated with the conversion, including termination liability as provided in the tariff). *Id.* at 91-92. Accordingly, Staff recommends that the Commission adopt AT&T proposed language in Attachment 2 Sections 3.5.4.

VI. IP INTERCONNECTION

ISSUES 1, 11, AND 18

Sprint Description of Issue 1: Should this Agreement preclude the exchange of Information Services traffic; or, require that traffic be exchanged in TDM format?

AT&T Illinois Description of Issue 1(a): Should the ICA provide for IP-to-IP interconnection or should it provide that all traffic that Sprint delivers to AT&T under the ICA must be delivered in TDM format?

Joint Party Description of Issue 11: Should terms and conditions regarding IP Interconnection be included in the Agreement?

AT&T Illinois Description of Issue 18: Should the ICA address POIs for IP-to-IP interconnection and, if so, is Sprint's proposed language just and reasonable?

Sprint Description of Issue 18: How and where will IP POIs be established?

Sprint and AT&T Illinois currently exchange traffic between their networks in Time Division Multiplexed ("TDM") format. AT&T Illinois Ex. 2.0 at 84. In this arbitration, Sprint is seeking the right to exchange traffic with AT&T Illinois in Internet Protocol ("IP") format. Sprint Ex. 1.0 at 34. Sprint proposes, with limited exceptions that

the details of IP-to-IP Interconnection should be determined at a later date, but separately proposes the Commission determine that Sprint has a right to exchange traffic with AT&T Illinois in IP format. *Id.*

In arbitrating disputes brought pursuant to Section 252(b) of the Act, the Commission is required by Section 252(c) to ensure that resolution and conditions of interconnection meet the requirements of Section 251 of the Act and the FCC's Part 51 rules implementing the requirements of Section 251. 47 U.S.C.A. §§ 251, 252 (West 2012); 47 C.F.R. § 51 (West 2013). In this case, the Commission should make no such determinations because Sprint, with one exception, has not identified the terms and conditions under which it seeks IP interconnection. Staff Ex. 1.0 at 7. As a result, it is not possible to assess whether the terms and conditions under which Sprint seeks IP interconnection meet the requirements of Section 251 of the Act and those of the FCC's Part 51 rules implementing the requirements of Section 251. *See* 47 U.S.C.A. § 251; 47 C.F.R. § 51**.**

The only detail that Sprint has proposed with respect to its IP interconnection proposal is that the parties will exchange traffic "at the existing internet exchange points ('IXP' or 'IP POI'), where they are currently interconnected (e.g., Los Angeles, San Jose, Seattle, Chicago, Dallas, D.C. Metro, Miami, New York City, and or Atlanta) or such additional IP POIs as may be mutually agreed." AT&T Illinois Response to Petition for Arbitration, Revised DPL, Filed October 29, 2012,, Issue 18, Sprint Language. This point, however, does not comport with the requirements of Section 251 of the Act or the FCC and ICC rules and regulations implementing it. 47 U.S.C.A. § 251; 47 C.F.R. § 51; 83 Ill. Admin. Code § 790**.** First, Section 251 of the Act requires interconnection at any

"technically feasible point within the carrier's network." 47 U.S.C.A. § 251(c)(2)(B). The points identified by Sprint include points located outside of AT&T Illinois' incumbent carrier network. Staff Ex. 1.0 at 13. Second, the Commission's Interconnection rules permit ILECs to require at least one technically feasible point of interconnection within a local access and transport area. 83 Ill. Admin. Code § 790.310(a)(2). Sprint's language references only one interconnection point in Illinois (identified as "Chicago") despite the fact that there are numerous local access and transport areas in Illinois. DPL, Issue 18, Sprint Language. Thus, Sprint's plan is inconsistent with the requirements of Section 251 of the Act and the FCC and ICC rules and regulations implementing it. *See* 47 U.S.C.A. § 251; 47 C.F.R. § 51; 83 Ill. Admin. Code § 790. This exemplifies and underscores why the Commission cannot determine whether Sprint's proposal, or any proposal, is compliant with the requirements of Section 251 of the Act or the FCC and ICC rules and regulations implementing it without the details of such a plan. *See* 47 U.S.C.A. § 251; 47 C.F.R. § 51; 83 Ill. Admin. Code § 790.

Sprint spent considerable time and effort in testimony and during hearings in this proceeding in an apparent attempt to show that some type of IP interconnection is technically feasible. Sprint Ex. 1.0 at 30-32; Sprint Ex. 4.0 at 13-15, 30; *Tr.* at 536 - 558**.** Nevertheless, even to the extent that Sprint was able to show that some type of IP interconnection might be feasible, Sprint did not show the manner in which it proposes to interconnect is technically feasible. Sprint could not do so, because Sprint specifically did not present an interconnection plan.

Similarly, Sprint spent considerable time and effort aimed at the issue of whether facilities of AT&T Corp., AT&T Illinois' affiliate, should be deemed part of AT&T Illinois'

network. Sprint Ex. 1.0 at 32-33; Sprint Ex. 4.0 at 7-12; *Tr.* at 539 - 563. Sprint did not, however, present an interconnection proposal that would have Sprint connect to the AT&T Corp. facilities.

The determinations that Sprint is asking the Commission to make in this proceeding: a general pronouncement that it is technically feasible to exchange voice traffic subject to Section 251/252 using IP Interconnection and that AT&T Illinois' affiliate IP network elements should be deemed part of AT&T Illinois network, are pronouncements that might or might not be relevant to any later determination on a Sprint interconnection plan. Sprint Ex. 1.0 at 21-23, 28, 32-33; Sprint Ex. 4.0 at 7-16, 26-28, 30. For example, it's immaterial whether or not a particular type of IP interconnection is feasible if Sprint, when it actually proposes the details of its proposed interconnection methodology, proposes a different method that is not feasible.

The Commission has never, heretofore, determined that any provider has the right, pursuant to the Act to exchange traffic with an incumbent local exchange carrier ("ILEC") in IP format. Nor has the Commission determined the rates, terms, and conditions under which such interconnection must occur consistent with the requirements of Section 251 of the Act or the FCC and ICC rules and regulations implementing it. The legal question of whether IP Interconnection can be compelled pursuant to Section 251 is an open one at the FCC. *CAF Order* at ¶ 1389. This is particularly important because the Commission's ability to regulate or otherwise impose obligations on providers using IP protocol outside the confines of its Federal Authority is circumscribed by the Illinois Public Utilities Act, which states:

> Except to the extent expressly permitted by and consistent with federal law, the regulations of the Federal Communications Commission, this

> Article, Article XXI or XXII of this Act, or this amendatory Act of the 96th General Assembly, the Commission shall not regulate the rates, terms, conditions, quality of service, availability, classification, or any other aspect of service regarding (i) broadband services, (ii) Interconnected VoIP services, (iii) information services, as defined in 47 U.S.C. 153(20) on the effective date of this amendatory Act of the 96th General Assembly or as amended thereafter, or (iv) wireless services, including, but not limited to, private radio service, public mobile service, or commercial mobile service, as those terms are defined in 47 U.S.C. 332 on the effective date of this amendatory Act of the 96th General Assembly or as amended thereafter.

220 ILCS 5/13-804 (West 2012). Thus, if the Commission requires AT&T Illinois to interconnect with Sprint in IP format, it must do so under its express Section 252 authority. 47 U.S.C.A. § 252(b). This is a case of first impression for the Commission that must be decided pursuant to Federal law, which the FCC has not yet interpreted. *See* 220 ILCS 5/13-804; 47 U.S.C.A. § 252(b).

With no proposal before it, there is no way for the Commission to estimate or otherwise predict the impact of the imposition of a requirement that the parties connect on an IP-to-IP basis. For example, such imposition could mean that AT&T Illinois would have to exchange traffic in IP format, even when coming from, and destined for customers served through, TDM networks. It could mean that AT&T Illinois would be required to deploy IP facilities in areas where neither it nor any of its affiliates have U-verse related interconnection facilities (e.g., southern Illinois). It could mean that AT&T Illinois is required to transport traffic for conversion from areas where it does not have U-verse related interconnection facilities to areas where it does, and potentially back again. Because it is unclear whether or not such requirements would result from Sprint's proposed IP-to-IP connection plan, whether or not these or similar requirements are technically feasible or otherwise consistent with Section 251 of the Federal Act

cannot be appropriately addressed in this proceeding. *See* 47 U.S.C.A. § 251. For these reasons, the Commission should not and cannot determine that IP-to-IP interconnection is technically feasible or otherwise comports with the requirements of the Federal Act. 220 ILCS 5/13-804; 47 U.S.C.A. § 252(b).

In contrast, if the Commission decisively rejects the exchange of traffic in IP format under any circumstance, then parties that rely increasingly on IP protocol in their own networks might be forced to make needless protocol transfers to and from TDM format when exchanging traffic they carry on their own networks in IP format. Staff Ex. 1.0 at 9. Thus, a prohibition on IP-to-IP interconnection going forward could, among other things, result in needless conversion costs in the future. *Id.* This is particularly troubling in light of what is seemingly a general consensus that networks and network interconnection are inevitably moving toward IP format.

In light of the above, Staff recommend that the Commission should require the parties to include in the Interconnection Agreement language that will allow Sprint (and AT&T Illinois, if it so desires) to develop language prescribing the rates, terms, and conditions for IP-to-IP interconnection, including those for the transition from TDM-to-TDM to IP-to-IP interconnection, and to petition the Commission for inclusion of its language in the Interconnection Agreement. *Id.* at 11. This proposal does not impose an ambiguous requirement of uncertain effect on AT&T Illinois, but also does not foreclose IP-to-IP interconnection for the life of the contract. *Id.* In their rebuttal testimony, both Parties submitted language in response to Staff's proposal. Sprint Ex. 4.0 at 36; AT&T Illinois Ex. 2.1 at 4-5. Staff recommends adoption of AT&T Illinois' proposed language. *See* AT&T Illinois Ex. 2.1 at 4-5.

Of the two proposals responding to Staff's recommendation, AT&T Illinois' proposal follows precisely the recommendation of Staff. *Id.*; Staff Ex. 1.0 at 11. It preserves Sprint's (or AT&T Illinois') right to propose a specific IP-to-IP interconnection proposal without prejudging the merits of any such proposal. AT&T Illinois Ex. 2.1 at 4-5. In contrast, Sprint's language would find that IP-to-IP interconnection is technically feasible, and would deem AT&T Illinois' affiliates IP network elements to be part of AT&T Illinois' own network. Sprint Ex. 4.0 at 36. As explained above, it is uncertain whether either determination would be accurate and/or necessary under any specific proposal put forward in the future. 220 ILCS 5/13-804; 47 U.S.C.A. § 252(b). As a result, in Order to resolve Issues 1, 11, and 18, the Commission should require the parties to include in the Interconnection Agreement the language proposed by Mr. Albright that will allow Sprint (and AT&T Illinois, if it so desires) to develop future contract language prescribing the rates, terms, and conditions for IP-to-IP interconnection, including those for the transition from TDM-to-TDM to IP-to-IP interconnection, and to, once developed, petition the Commission for inclusion of its language in the Interconnection Agreement. *See* AT&T Illinois Ex. 2.1 at 4-5.

VII. TRANSIT

ISSUE 43

Joint Description of Issue 43: What is the appropriate rate that a Transit Service Provider should charge for Transit Traffic Service?

Staff recommends that the Commission, based upon policy considerations, order AT&T to provide transiting services at proxy TELRIC compliant rates.

A. The Commission Can Order AT&T to Provide Transit Traffic Service at TELRIC Rates

There is a threshold legal issue in Issue 43. Whether the Commission can order AT&T to provided transit traffic service to Sprint and at what price.

i. The 1996 Act and FCC Orders

Sprint contends that Transit Traffic Service should be provided by AT&T Illinois pursuant to Sections 251/252 of the 1996 Act. Sprint witness Farrar posits that, since Transit Traffic Service is how Sprint terminates its traffic to customers that it is not directly interconnected to, its provision by AT&T Illinois is subject to Sections 251(a) and 251(c)(2)(A) through (D) of the 1996 Act. Section 252(d) is the pricing standard, which the FCC has established at TELRIC. Sprint Ex. 3.0 at 16. In support of its position, Sprint witness Farrar states that 18 states have decided that ILECs must provide Transit Traffic under the 1996 Telecom Act and price it at cost.

AT&T, however, states that the FCC has never ruled that Transit Traffic Service is subject to the Act. AT&T witness Mr. McPhee cites to FCC orders from the 2002-2003 timeframe that support his contention. AT&T Illinois Ex. 4.0 at 4-5. Thus, according to AT&T Illinois, federal law neither mandates that ILECs provide Transit Traffic Service to CMRS providers, nor price it at TELRIC. AT&T Illinois offers to provide the service to Sprint, but its proposed rate is the existing tariff rate. *Id*. at 5.

Staff agrees with AT&T to the extent that the FCC has never required an ILEC to provide transit service under Sections 251 and 252 of the Act. However, to the best of Staff's knowledge, the FCC has never precluded state commissions from ordering an ILEC to provide transit service under Sections 251 and 252 of the Act. Thus, the fact that the FCC may have never ruled that transit traffic service is subject to the Act, is not the end of the inquiry.

ii. Public Policy Background

The Illinois General Assembly ("GA") has expressed certain policy requirements that the Commission must abide by in addressing issues like the instant one. For purposes of Issue 43, Section 13-801 of the PUA is instructive. Section 13-801 provides, in relevant part, the following:

> (a) This Section provides additional State requirements contemplated by, but not inconsistent with, Section 261(c) of the federal Telecommunications Act of 1996, and not preempted by orders of the Federal Communications Commission.
>
> * * *
>
> An incumbent local exchange carrier shall provide a requesting telecommunications carrier with interconnection, collocation, network elements, and access to operations support systems on just, reasonable, and nondiscriminatory rates, terms, and conditions to enable the provision of any and all existing and new telecommunications services within the LATA, including, but not limited to, local exchange and exchange access. The Commission shall require the incumbent local exchange carrier to provide interconnection, collocation, and network elements in any manner technically feasible to the fullest extent possible to implement the maximum development of competitive telecommunications services offerings.
>
> * * *
>
> (g) Cost based rates. Interconnection, collocation, network elements, and operations support systems shall be provided by the incumbent local exchange carrier to requesting telecommunications carriers at cost based rates. The immediate implementation and provisioning of interconnection, collocation, network elements, and operations support systems shall not be delayed due to any lack of determination by the Commission as to the cost based rates. When cost based rates have not been established, within 30 days after the filing of a petition for the setting of interim rates, or after the Commission's own motion, the Commission shall provide for interim rates that shall remain in full force and effect until the cost based rate determination is made, or the interim rate is modified, by the Commission.

220 ILCS § 5/13-801.

Accordingly, the Illinois GA has mandated that the "Commission shall require the incumbent local exchange carrier to provide interconnection . . . in any manner

technically feasible to the fullest extent possible to implement the maximum development of competitive telecommunications services offerings." 220 ILCS § 5/13-801(a). And that interconnection shall be provided at "cost based rates." 220 ILCS § 5/13-801(g). The Commission, consequently, needs to assess whether providing transit service in Illinois at cost helps "implement the maximum development of competitive [transit] services offerings." 220 ILCS § 5/13-801(a).

B. There Is Not a Viable Competitive Market For Transit Services In Illinois

AT&T contends that there is a "vibrant" competitive market in Illinois for transit services. AT&T Ex. 5.0 at 7. AT&T witness Dr. Ola Oyefusi explained that in a competitive market:

> It is elementary economics that competition forces companies to set prices that reflect costs, and it is unlikely that any company facing competition will be able to sustain higher prices without competitors taking market share, forcing it to lower its price or make other concessions that will make its net offer more attractive.

Id. at 9.

Despite this elementary aspect of the competitive market economics addressed by Dr. Oyefusi, he was completely unable to identify any evidence of a price reduction or some specific concession that AT&T made to Sprint in the negotiations under of the ICA under the Act. *Tr.* at 746-761. AT&T attempted to distinguish between the dynamics of a "regulated" market and those of a "commercial" market; this, however, is a distinction with no difference. First, it is AT&T's position in this proceeding that transit is not a Section 251 or 252 regulated service. If so, then the competitive market forces predicted by Dr. Oyefusi should have come into play, resulting in AT&T offering Sprint a reduced price from its tariffed rates or some other specific concession. AT&T, however,

is only able to provide evidence of the effects of market discipline in the commercial market to the extent that it is contained in an affiliate agreement between AT&T the ILEC (multi-state) and AT&T Mobility. *Tr.* at 770. This price contained in this AT&T ILEC (multi-state) and AT&T Mobility agreement was not offered to Sprint, belying the notion of any viable competitive market for transit here in Illinois. Under either market, however, the competitive market dynamics had utterly no effect on AT&T in its negotiations with Sprint.

To be clear, Staff does not claim that there is *no* level of competition in the Illinois transit market. But exactly what level of competition is not clear. Even AT&T witness Dr. Oyefusi was unable to say how much market share AT&T has lost due to competition. *Tr.* at 755.

C. Staff Conclusion

Although Staff concludes that the provision and pricing of transit services at TELRIC is not specifically required by the Act, the FCC Order or the PUA, public policy drives Staff's recommendation that the public interest is best served by requiring AT&T Illinois to provide transit under TELRIC rates. Staff Ex. 4.0 at 18. Staff's recommendation is consistent with past Commission orders. The Commission addressed this issue head-on in a 1996 MCI – Illinois Bell Tel. Co. arbitration.[1] In the 1996 MCI Arbitration, the Commission responded to the same arguments AT&T asserts in this proceeding by noting that "we clearly reserve[] the issue of whether public policy concerns might cause the Commission to impose transiting as an obligation on an

[1] *Arbitration Decision*, MCI Telecommunications Corp. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish and Interconnection Agreement with Illinois Bell Tel. Co. d/b/a Ameritech Illinois, ICC Docket No. 96-AB-006, 1996 WL 33660256 (Dec. 17, 1996) ("1996 MCI Arbitration").

incumbent local exchange carrier if the parties present it as an unresolved issue in an arbitration." 1996 MCI Arbitration, at *16. Obviously, Sprint, like MCI, has presented transiting as an unresolved issue. In that proceeding, like Staff here, the Commission concluded that it "will require Ameritech Illinois to include a transiting provision in its interconnection agreement with MCI. *Id*. In reaching its conclusion, the Commission reasoned that:

> As MCI noted, all interconnections between carriers should be done as efficiently as possible, and for the foreseeable future all telecommunications carriers will be interconnected to the incumbent carrier. If transit service is not provided, non-incumbent carriers might be forced to establish costly direct connections to other carriers before traffic volumes justified that expense.
>
> Ameritech Illinois' narrow interpretation of the term "interconnection" and its obligations under the law, suggests that it believes that it is only required to physically link its network with a single other carrier but is not required to actually do anything with the traffic it receives. The very essence of interconnection is the establishment of a seamless network of networks, and to develop fine distinctions between types of traffic, as Ameritech Illinois would have us do, will merely create inefficiencies, raise costs and erect barriers to competition. We decline to do so.
>
> * * *
>
> The vital public interest in efficient carrier interconnection at reasonable rates necessitates that we impose this interconnection obligation on Ameritech Illinois, and we find that our doing so is fully consistent with the terms and policies of the 1996 Act and FCC Order, as well as Illinois law. At a minimum, transiting will facilitate the indirect interconnection contemplated by Section 251(a)(1) of the 1996 Act.

Id.

The same vital public interests are at issue here. In fact, Staff witness Dr. Rearden, using similar reasoning, came to essentially the same conclusion as the Commission did in the MCI Arbitration. Dr. Rearden concluded that "the public interest is served by requiring AT&T Illinois to provide the service under TELRIC rates." Staff

Ex. 4.0 at 18. Dr. Rearden noted that the Act was intended to open up the local market to competition. *Id.* at 17. To facilitate competition, he explained, the Act requires incumbent providers to provide inputs that are not easily duplicated by entrants. That is, the expense needed to re-create an ILEC's connections to multiple carriers makes entry risky, which discourages entry. *Id.* This incumbent's advantage gives AT&T Illinois the market power to charge rates above costs. Above-cost prices results in reduced use of the telecommunications and lowers consumer welfare. As it stands, it seems obvious that AT&T Illinois' current rate is well above current, forward-looking TELRIC. Therefore, Dr. Rearden concluded, the public interest is served by reducing the Transit Traffic Service closer to cost. The question then becomes exactly which close to cost rate is most appropriate. *Id.*

AT&T Illinois asserts that its current tariffed rate is already cost based and TELRIC compliant. AT&T Illinois Ex. 4.0 at 7. However, Sprint asserts that the current TELRIC rates were established in 1998-2001, and are thus outdated. Sprint Ex. 3.0 at 28-29.

In order to bring the rate closer to cost than the outdated tariffed rate, Sprint proposes a proxy rate equal to $0.00035 per MOU. Staff Ex. 4.0 at 13. It arrives at that rate by halving the proxy reciprocal compensation rate for Internet Service Providers ("ISP"), which is $0.0007 per MOU. Sprint argues that Transit Traffic involves less than half of the functions of the proxy ISP rate. *Id*.

Sprint witness Mr. Farrar discusses the estimated rates from four different sources. Sprint Ex. 3.0 at 28-29. He examines AT&T's letter to the FCC, in which it

estimated switching costs per MOU at between $0.00010 and $0.00024.[2] He looked at AT&T's cost-based transit rates with Sprint in other states and reports rates as low as $0.000947 to $0.000454 per MOU. AT&T Illinois' reciprocal compensation rate is $0.0007 per MOU. And Frontier's Illinois reciprocal compensation rate with Sprint is $0.0004 per MOU. Based on this survey, he concludes that half the proxy reciprocal compensation rate is a reasonable estimate. *Id*. at 30-36.

AT&T, on the other hand, does not agree that its tariffed rate is outdated and continues to propose using its existing, Transit Traffic tariff rate equal to $0.005034 per MOU. Staff Ex. 4.0 at 13. AT&T Illinois witness McPhee breaks the rate down into $0.004836 per MOU for tandem switching, $0.000189 per MOU for tandem transport and $0.000009 per MOU for tandem transport facility. *Id*. AT&T argues the Commission should order its tariffed transit rate, which although regulated under Article IX tariffing requirements of the PUA, is not a Sections 251 or 252 TELRIC required service.

The Commission, consequently, faces a least-worst choice between a TELRIC rate that is based on outdated cost studies or a non-Illinois, non-TELRIC rate that is a proxy for TELRIC in this state. Staff recommends, for public policy reasons, that the Transit Traffic rate be based upon TELRIC. One way to accomplish that is for the Commission to order the Parties to use a proxy rate. Staff offered, in Dr. Rearden's testimony (Staff Ex. at 18-19), several options for the Commission to choose from. In addition, the rate provided for in the AT&T Mobility commercial agreement with AT&T also appears to be a reasonable proxy. *Tr.* at 768 ("about 0.0025 per minute of use").

[2] Note that this rate is just for switching and does not include the Tandem Transport or Tandem Transport Facility that is part of AT&T Illinois' proposed Transit Traffic Service rate.

Moreover, if the Commission prefers, it could order its choice of a proxy rate as an interim rate, pending the outcome of a hearing on whether or not the transit service market in Illinois is competitive or until an updated Illinois specific TELRIC rate can be discerned. On the other hand, if the Commission were to adopt AT&T's proposal and continue to use the current outdated tariffed TELRIC rate (at $0.005034 per MOU), then Staff recommends that the Commission make that an interim rate pending an investigation into directly determining the TELRIC of Transit Traffic Service under current technologies, costs and market conditions.

VIII. SECTION 251(b)(5): SCOPE OF INTRAMTA BILL AND KEEP

ISSUE 5

Sprint Description: What is the appropriate definition of "Section 251(b)(5)" tariffs?

AT&T Illinois Description: Should the Agreement contain a definition of Section 251(b)(5) Traffic? If so, what is the appropriate definition?

Sprint proposes to include within the Interconnection Agreement a definition of "Section 251(b)(5) Traffic." DPL, Issue 5, Sprint Language. The parties argue as to whether the definition of "Section 251(b)(5) Traffic" appropriately acknowledges or clarifies the FCC's view of what traffic falls within the ambit of Section 251(b)(5) of Federal Act. AT&T Illinois Ex. 1.0 at 51-52; Sprint Ex. 2.0 at 55-56. AT&T Illinois expresses concern with Sprint's proposal to include a definition of Section 251(b)(5) because the definition offered is overly-general, potentially including, for example, 911 traffic, which AT&T Illinois asserts is not Section 251(b)(5) Traffic. DPL, Issue 5, AT&T Position; AT&T Illinois Ex. 1.0 at 55.

As noted by Dr. Zolnierek, this definition of Section 251(b)(5) Traffic is included in the Interconnection Agreement in only three instances: within Sprint's proposed definitions of (1) "IntraMTA Traffic," (2) "Non-Toll InterMTA Traffic," and (3) "Toll InterMTA Traffic." Staff Ex. 1.0 at 24. It is only through these definitions that references to "Section 251(b)(5) Traffic" has any bearing on the Interconnection Agreement. *See id.* In none of these instances does Sprint's inclusion of the term "Section 251(b)(5) Traffic" expand the type of traffic governed by the provisions of the Interconnection Agreement when compared to AT&T Illinois' competing and generally more generic proposal to use the term "traffic." *Id.* at 28. Thus, AT&T Illinois' concern with the inclusion of a definition of Section 251(b)(5) Traffic, in particular AT&T Illinois' concern that it would include traffic types such as 911 traffic that AT&T Illinois does not believe are appropriately included within the scope of IntraMTA traffic is, as a practical matter, moot. *Id.*

While the expansiveness concern that AT&T Illinois raises is not a reason to exclude the definition of "Section 251(b)(5) Traffic," acknowledging and/or clarifying a decision of the FCC is, in and of itself, not a sufficient reason to include the definition in the Interconnection Agreement. Furthermore, as discussed in detail below, the Interconnection Agreement will be clearer if aspects of Sprint's definition of "Section 251(b)(5) Traffic" (those that do not cause AT&T Illinois' primary concern, but that are of practical import to the Interconnection Agreement) are included directly in the definitions of "IntraMTA Traffic," "Non-Toll InterMTA Traffic," and "Toll InterMTA Traffic," rather than through cross references to the definition of Section 251(b)(5) Traffic. *Id.* at 26-27. Thus, Staff recommends that Sprint's proposal to include a definition of Section 251(b)(5) Traffic be rejected. *Id.* at 27.

ISSUE 6

Joint Party Description: What is the appropriate definition of "IntraMTA Traffic"?

Sprint proposes to include language in the definition of "IntraMTA Traffic" specifying, in part, that this traffic is "that portion of Section 251(b)(5) Traffic exchanged between AT&T Illinois and Sprint." DPL, Issue 6, Sprint Language; Sprint Ex. 2.0 at 57. Under Sprint's definition, which incorporates Section 251(b)(5) Traffic into the definition, "IntraMTA Traffic" would be equivalent to "traffic originated by one Party that is exchanged directly or indirectly and terminates on the other Party's network." Sprint Ex. 2.0 at 56. AT&T Illinois proposes the use of "traffic" rather than "Section 251(b)(5) Traffic" and proposes to specify, in part, that this traffic is "exchanged between the End User of AT&T Illinois and Sprint's End User." DPL, Issue 6, AT&T Language; *see* AT&T Illinois Ex. 2.0 at 52.

Substantively, there are a limited number of differences between the parties' proposals for defining IntraMTA traffic. First, as noted above, AT&T Illinois expresses concern that the "Section 251(b)(5) Traffic" is overly-general, potentially including, for example, 911 traffic, which AT&T Illinois asserts is not Section 251(b)(5) Traffic. DPL, Issue 5, AT&T Position; AT&T Illinois Ex. 2.0 at 56; *see* Staff Ex. 1.0 at 28. Sprint's use of Section 251(b)(5) Traffic is, however, no more general than is AT&T Illinois use of "traffic." *See* DPL, Issue 6, Sprint Language; DPL, Issue 6, AT&T Illinois Language; Staff Ex. 1.0 at 28. Using "Section 251(b)(5) Traffic Traffic" rather than "traffic" does not, with regard to the general classes of traffic included with the definition of IntraMTA traffic, restrict or otherwise circumscribe what traffic falls within the definition. *Id.*

Therefore, as regards this aspect of the dispute, there is no compelling reason to use Section 251(b)(5) Traffic in the definition of IntraMTA traffic. *Id.*

Second, AT&T Illinois' definition does not specify whether IntraMTA traffic is traffic exchanged directly or indirectly. *Id.* at 29. While it is clear that the interconnection agreement governs the direct exchange of traffic between the parties' networks, whether it applies with respect to the indirect exchange of traffic between the parties' networks is less certain. *Id.* at 29-30. Sprint's definition, by reference to Section 251(b)(5) Traffic, specifies that the definition includes both forms of traffic: traffic exchanged directly and traffic exchanged indirectly. *Id.* at 30. As noted by Dr. Zolnierek, the FCC has specified that interconnection agreements are precisely the place for the parties to establish compensation arrangements for IntraMTA traffic, whether indirectly or directly exchanged. *Id.* Therefore, as regards this aspect of the dispute, the definition of IntraMTA traffic should encompass both the direct and indirect exchange of traffic between the parties. *Id.* To avoid ambiguity, the inclusion of directly and indirectly exchanged traffic should be specified within the definition of IntraMTA traffic, and should not be incorporated through cross reference to the definition of Section 251(b)(5) Traffic. *Id.* at 30-31.

Third, AT&T Illinois' definition specifies that IntraMTA traffic is traffic that is between an End User of AT&T Illinois and Sprint's End User. DPL, Issue 6, AT&T Illinois Language. Alternatively, Sprint's definition, by reference to Section 251(b)(5) Traffic, specifies that the definition includes traffic that is originated by one Party and terminates on the other Party's network. DPL, Issue 6, Sprint Language. While there has been some confusion in the industry as to what constitutes origination and

termination, it is unclear what difference there is between a call that is originated by a party and one that is from the party's end user or, similarly, between a call that is terminated by a party or to the party's end user. Staff Ex. 1.0 at 31. With respect to Issue 1, the parties have adopted elements of both of these general descriptions referring to traffic sent from AT&T Illinois to Sprint under this agreement as "traffic that . . . is delivered by AT&T ILLINOIS to Sprint's wireless network for termination by Sprint to its End users." *Id.* at 31-32. At the risk of redundancy, Staff recommends language similar to that adopted by the parties with respect to Issue 1, which Staff believes will remove any ambiguity as to the meaning of the parties' respective definitions. *See id.* The parties should use language that declares IntraMTA Traffic, in part, to be "traffic originated by one Party on its network from its End User and delivered to the other Party for termination on its network to its End User." *Id.* at 32. Again, to further avoid ambiguity, the definition of IntraMTA traffic should directly specify the inclusion of this language, and should not incorporate references to "terminated" or "originates" through cross reference to the definition of Section 251(b)(5) Traffic. *Id.* at 33-34.

ISSUE 37

> *Sprint Description of Issue 37: Should IntraMTA Traffic be exchanged on a bill and keep basis?*
>
> *AT&T Illinois Description of Issue 37: Should IntraMTA Traffic be subject to bill and keep without exception?*

In this issue, the parties are disputing which exceptions to bill and keep should be stated in the agreement. In particular, the question is whether bill and keep should apply only to traffic that Sprint routes over Interconnection Trunks. Staff Ex. 4.0 at 22. AT&T Illinois proposes that indirect interconnection be excluded from bill and keep.

Sprint, on the other hand, argues that indirect interconnection is subject to bill and keep. *Id.*

AT&T Illinois argues that, "[a]ny traffic that Sprint routes via another carrier (*i.e*., indirectly) . . . will not be exchanged pursuant to the ICA." AT&T Ex. 1.0 at 67. This is the entirety of AT&T Illinois' argument. Sprint, on the other hand, proposes language at Attachment 2, 6.2.2.1 that explicitly allows bill and keep for IntraMTA traffic that is exchanged indirectly. Sprint Ex. 2.0 at 58-59. Sprint supports its proposed language by arguing that indirect interconnection, though likely rare, is still an exchange of traffic between the Parties. Sprint further argues that existing law or regulation does not subject indirectly delivered IntraMTA Traffic to a different compensation regime. *Id.* As such, Sprint argues every IntraMTA call, even if indirectly delivered, is subject to bill and keep. *Id*.

Staff notes that AT&T Illinois does not argue that the FCC has ruled that indirect interconnection is different from direct interconnection. Staff Ex. 4.0 at 23. AT&T's only response is to contend that the only defining characteristic of CMRS traffic that is subject to bill and keep is traffic that originates and terminates within the MTA. Staff is not persuaded by this argument. Staff, accordingly, recommends that the Commission agree with Sprint that indirect interconnection is subject to bill and keep under this ICA and adopt Sprint's proposed language at Attachment 2, 6.2.2.1. *Id*.

ISSUE 70

Joint Description of Issue 70: Which Party's' Pricing Sheets and rates should be adopted?

Neither party has provided any convincing argument for keeping the pricing

summary sheet in the ICA. If it is necessary to have a pricing summary sheet for the convenience of a party's contract personnel, this can be accomplished outside of the ICA, without creating redundancy in the ICA or creating the potential for future conflict. Thus, unless the parties reach agreement on this issue, Staff recommends that the pricing summary sheet, Pricing Sheet (Wireless) - Illinois, be excluded from the ICA. Staff Ex. 2.0 at 94-95.

IX. INTERMTA TRAFFIC

ISSUES 7 AND 8

Joint Party Description of Issue 7: What are the appropriate definitions related to "InterMTA Traffic"?

Sprint Description of Issue 8: What, if any, is the appropriate definition of "Switched Access Service"?

AT&T Description of Issue 8: What is the appropriate definition of "Switched Access Service"?

With respect to Issue 7, Sprint proposes to include definitions for both "Toll InterMTA Traffic" and "Non-Toll InterMTA Traffic." DPL, Issue 7, Sprint Language. Alternatively, AT&T Illinois proposes to use a definition that does not distinguish between toll and non-toll InterMTA Traffic. DPL, Issue 7, AT&T Illinois Language. Additionally, AT&T Illinois proposes an additional definition of "Terminating InterMTA Traffic," which includes traffic that Sprint originates in an MTA and sends to AT&T Illinois for termination in a different MTA. *Id.*

With respect to Issue 8, Sprint proposes, through its proposed definition, to limit switched access services in two ways. First, Sprint proposes to define such services as a category or type of Exchange Access. DPL, Issue 8, Sprint Language. Second,

Sprint proposes to limit access to services offered to IXCs. *Id.* AT&T Illinois opposes Sprint's proposed limitations. DPL, Issue 8, AT&T Illinois Position.

Fundamentally, Sprint seeks with its IntraMTA traffic and switched access definitions to include almost all InterMTA traffic exchanged directly between the parties within the scope of the Interconnection Agreement and to exchange it on a bill and keep basis. Staff Ex. 1.0 at 36. AT&T Illinois, with its counter definitions, seeks to extensively exclude InterMTA traffic from the Interconnection Agreement, and, instead, exchange such traffic pursuant to its switched access tariffs. *Id.* at 35 -36.

In support of its position, Sprint argues that its nationwide calling plans equate to local calling plans with a service area comprised of the entire United States, that any charges to customers with a nationwide calling plan cannot be considered toll charges, that only toll InterMTA traffic is subject to switched access charges, and that the preponderance of its customers are on a nationwide calling plan. Sprint Ex. 2.0 at 42. Based upon this support, Sprint proposes that the contracts definitions should be consistent with its general proposal that all of its traffic, including its InterMTA traffic, should be exchanged with AT&T Illinois on a bill-and keep-basis. *Id.* at 43; DPL, Issues 7 and 8, Sprint Language.

Typically, InterMTA traffic has been exchanged outside Interconnection Agreements through switched access tariffs. Staff Ex. 1.0 at 36. Thus, incumbent local exchange carriers have been recipients of, and wireless carriers have been payers of, switched access charges with respect to InterMTA traffic. *Id.* In its recent CAF Order, the FCC put in place a plan that phases out access charges and moves to a bill and keep regime over several years. *CAF Order* at ¶ 809, 810. In adopting this phase out,

the FCC stated "a flash cut would entail significant market disruption to the detriment of consumers and carriers alike" and "the framework we adopt carefully balances the potential industry disruption for both payers and recipients of intercarrier compensation as we transition to a new intercarrier compensation regime more broadly." *Id.* In direct conflict with this FCC transition, Sprint's proposal would no longer subject InterMTA traffic to access charges under AT&T Illinois' tariffs, but rather would include InterMTA traffic within the Interconnection Agreement, and flash cut all of its traffic to bill and keep. *Id.*; Sprint Ex. 2.0 at 42, 43; DPL, Issues 7 and 8, Sprint Language. Sprint's proposal is, therefore, inconsistent with the FCC's CAF Order.

Sprint, provides several references to the FCC's 2008 Wireless Toll Declaratory Order in support of its proposal to include definitions for both "Toll InterMTA Traffic" and "Non-Toll InterMTA Traffic" in the Interconnection Agreement. Sprint Ex. 2.0 at 43. Sprint alleges that the FCC findings in the 2008 Wireless Toll Declaratory Order stand for the principle that nationwide flat-rated service plans are not toll plans and, therefore, are not subject to switched access intercarrier compensation rates. *Id.* at 37. This evidence should be accorded no weight because, as Mr. Felton acknowledges, the FCC specifically stated:

> The discussion of "toll services," "toll traffic," and "toll revenues" in this order pertains solely to universal service contribution obligations. Nothing in this order is intended to address intercarrier compensation and other issues raised in CC Docket No. 01-92 or other pending proceedings.

Id. at 41 (*citing Wireless Toll Declaratory Order,* 23 FCC Rcd at 1411, 1416 n.29). The FCC's determinations, according to the FCC itself, were not intended to address

intercarrier compensation issues such as those before the Commission in this proceeding. *Wireless Toll Declaratory Order,* 23 FCC Rcd at 1411, 1416 n.29.

Sprint also alludes to the FCC's determinations in its CAF Order, which were made with respect to non-toll traffic. Sprint Ex. 2.0 at 41. In particular, Mr. Felton references the FCC's determinations regarding VoIP-PSTN traffic in the CAF Order. Sprint Ex. 2.0 at 41 (*citing CAF Order*, 26 FCC Rcd 17663, 18008 n.1902 (2011)). These FCC determinations were made with respect to VoIP-PSTN traffic, and the FCC made no similar determinations with respect to LEC-CMRS traffic. *See, generally*, *CAF Order*, 26 FCC Rcd 17663. This is informative, because the circumstances surrounding the issue of intercarrier compensation for VoIP-PSTN traffic differ from the circumstances surrounding the issue of intercarrier compensation for LEC-CMRS traffic.

As noted above, InterMTA traffic has traditionally been exchanged outside Interconnection Agreements through switched access tariffs, and incumbent local exchange carriers have been recipients of, and wireless carriers have been payers of, switched access charges with respect to InterMTA traffic. Staff Ex. 1.0 at 36. In contrast VoIP-PSTN traffic has not always been the subject to traditional intercarrier compensation rates. *See CAF Order at ¶ 28.* In particular, the FCC recently stated in a reconsideration of its CAF Order:

> The Commission also found, however, that VoIP traffic had been a particular source of intercarrier compensation disputes and litigation. As a result, "carriers may receive some intercarrier compensation payments at something less than the full intercarrier compensation rates charged in the case of traditional telephone service" or, in some cases, no payment at all.

Id. Similarly, the FCC stated:

> [B]ased on the available record evidence, the Commission found as a practical matter that compensation for VoIP traffic was widely subject to dispute and varied outcomes, and that "the record is clear that many providers did not pay the same intercarrier compensation rates for VoIP traffic that would have applied to traditional telephone service traffic.

Id. at ¶ 32. Thus, unlike for other forms of traffic including LEC-CMRS traffic, VoIP-PSTN traffic was not, when the FCC made its determinations in its CAF Order, subject to traditional intercarrier compensation rates. See *id.* As a result, rather than imposing an intercarrier compensation scheme transitioning from a pre-existing status quo, the FCC, as concerned VoIP-PSTN, was in the position of defining new intercarrier compensation requirements. *Id.* In such circumstances, creating differences between Toll and non-Toll access does not necessarily represent a change to the status quo as it generally does for other forms of traffic. Staff Ex. 1.0 at 41. Thus, determinations made by the FCC with respect to VoIP-PSTN traffic are not, absent FCC specification to the contrary, applicable to LEC-CMRS traffic. *CAF Order* at ¶ 32.

The FCC has long used the IntraMTA rule to define which LEC-CMRS traffic is subject to reciprocal compensation and which LEC-CMRS traffic is subject to access. *Federal Communications Commission, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 96-9, CC Docket No. 95-185, First Report and Order* ("Implementation of Local Competition Provisions")*, (August 8, 1996)* ¶ 1036. In its First Report and Order, the FCC established that:

> [T]raffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges.

Id. In Intercarrier Compensation Further Notice of Proposed Rulemaking, the FCC stated:

> The purpose of the intraMTA rule is thus to distinguish access traffic from section 251(b)(5) CMRS traffic.

Federal Communications Commission, In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, (March 3, 2005) ¶ 135. These FCC statements reflect that the FCC has used the MTA to demarcate traffic that is subject to reciprocal compensation as opposed to switched access. *Id.* In its recent CAF Order, the FCC stated:

> Because the changes we adopt in this Order maintain, during the transition, distinctions in the compensation available under the reciprocal compensation regime and compensation owed under the access regime, parties must continue to rely on the same intraMTA rule to define the scope of LEC-CMRS traffic that falls under the reciprocal compensation regime.

CAF Order at ¶ 1004. Thus, the FCC clearly and unequivocally preserved the use of the MTA to demarcate LEC-CMRS traffic that is subject to reciprocal compensation from LEC-CMRS traffic that is subject to switched access. *Id.*

For all of the reasons above, the Commission should reject Sprint's attempt to included definitions in the interconnection agreement that nullify the InterMTA rule, and result in the application of reciprocal compensation rates to all of Sprint's InterMTA traffic exchanged directly between the parties. *See id.* Instead the Commission should adopt AT&T Illinois' language for Issues 7 and 8, which is consistent with the preservation of the IntraMTA rule and the application of switched access charges to

InterMTA LEC-CMRS traffic. DPL, Issue 7, AT&T Illinois Language; DPL, Issue 8, AT&T Illinois Language; *see CAF Order* at ¶ 1004.

ISSUE 36

Sprint Description of Issue 36: What categories of Authorized Services traffic are subject to compensation between the Parties?

AT&T Illinois Description of Issue 36(a): Should the ICA include compensation terms for Sprint's term "Non-Toll InterMTA Traffic"?

AT&T Illinois Description of Issue 36(b): What is the appropriate compensation for mobile-to-land InterMTA Traffic)

Dr. Rearden explains that the ICA governs how AT&T Illinois and Sprint will exchange Authorized Services traffic, and specifies the types of traffic that are subject to it, and what, if any, compensation should be paid for that traffic. Staff Ex. 4.0 at 19. Sprint proposes five types of Authorized Services traffic: (1) IntraMTA; (2) Non-Toll InterMTA; (3) Toll InterMTA; (4) Transit Service; and (5) VoIP-PSTN Traffic. Sprint Ex. 2.0 at 52. Sprint differentiates between "Non-Toll" and "Toll" InterMTA Traffic, arguing that "Non-Toll InterMTA Traffic" should be subject to bill and keep. *Id.*

AT&T Illinois, on the other hand, proposes to classify traffic into InterMTA, IntraMTA and IXC. AT&T Ex. 1.0 at 63-64. In particular, AT&T Illinois rejects separation of InterMTA Traffic into Toll and Non-Toll, arguing all InterMTA Traffic is subject to access charges. *Id.* In addition, AT&T Illinois proposes language to exclude various traffic types from bill and keep. AT&T Illinois argues that Non-CMRS Traffic, Toll-free calls, Third Party Traffic, InterMTA Traffic, IXC Traffic, and any other type of traffic found to be exempt from bill-and-keep. *Id*. at 65-66. Sprint opposes AT&T Illinois' proposed exempt list, and instead intends to just name the traffic that is subject to bill and keep. Sprint Ex. 4.0 at 19-20. AT&T Illinois witness Ms. Pellerin states that

the *CAF Order* at ¶ 978 found that bill and keep only applies to a call when, at its beginning, it originates and terminates within the same MTA. AT&T Ex. 1.0 at 64-66. In her view, Sprint's attempted distinction between Toll and Non-Toll InterMTA traffic does not comply with this Order. *Id*. As a result, AT&T Illinois' list of traffic types to be exchanged focuses on what is in the Order. In particular, Mr. Pellerin comments that IXC traffic is subject to Attachment 2, Section 7 of the *CAF Order*, and she argues a complete list of traffic that is excluded from bill and keep improves the ICA's clarity. *Id.*

Sprint witness Mr. Felton argues that according to the FCC's definitions, much of Sprint's InterMTA Traffic is "Non-Toll" since Sprint establishes the home calling area as the entire country, and thus its customers do not incur additional charges for most InterMTA calls. Sprint Ex. 2.0 at 38-39. Further, Sprint argues that specifically listing traffic that is excluded from bill and keep is not necessary and may cause confusion, since other parts of the agreement cover those types of traffic, the category may be undefined, or it could be misleading. Sprint Ex. 4.0 at 52-54.

Staff witness Dr. Zolnierek discusses this issue in his direct testimony. He notes that Sprint's proposal with respect to InterMTA Traffic departs from current FCC practice, and contradicts the plain language and intent of the CAF Order. *See CAF Order* at ¶ 1003-1008. Thus, Dr. Zolnierek recommends that the Commission reject Sprint's proposed InterMTA distinctions. Likewise, the Commission should reject Sprint's proposed definitions at Attachment 2, 6.2.1. Instead, it should adopt the definitions as proposed by AT&T Illinois at Attachment 2, 6.1.1. Staff Ex. 4.0 at 21. Staff, however, posits that, with respect to the AT&T Illinois' proposed exclusions at Attachment 2, 6.2.3.1.1 through 6.2.3.1.6, Sprint's arguments are on point. Staff Ex. 4.0

at 21. To the extent certain types of traffic are exempt from bill and keep is even relevant to the ICA, those types of traffic are either discussed elsewhere in the agreement or the inclusion of that type of traffic in a bill and keep exemption list would create some confusion. *Id.*

ISSUE 39 AND 40

> *Sprint Description of Issue 39: What is the appropriate compensation for Non-Toll InterMTA Traffic?*
>
> *AT&T Illinois Description of Issue 39(a): Should the ICA include compensation terms for Sprint's term 'Non-Toll InterMTA Traffic?*
>
> *AT&T Illinois Description of Issue 39(b): What is the appropriate compensation for mobile-to-land InterMTA Traffic?*
>
> *AT&T Illinois Description of Issue 39(c): Should the ICA include terms for AT&T to estimate the percentage of mobile-to-land InterMTA Traffic, if any, improperly routed over trunks obtained pursuant to the ICA and bill Sprint for terminating access in accordance with that percentage?*
>
> *AT&T Illinois Description of Issue 39(d): Should the ICA obligate Sprint to provide JIP in the call records for its originating IntraMTA and InterMTA Traffic or permit AT&T to use alternate methods to determine jurisdiction?*
>
> *Sprint Description of Issue 40: What is the appropriate compensation for Toll InterMTA Traffic?*
>
> *AT&T Illinois Description of Issue 40(a): Should the ICA include compensation terms for Sprint's term "Toll InterMTA Traffic"?*
>
> *AT&T Illinois Description of Issue 40(b): What is the appropriate compensation for mobile-to-land InterMTA Traffic?*

Sprint sums up its position on Issues 39 and 40 by arguing that "[t]he vast majority of Sprint's customers are on nation-wide calling at no additional charge." Sprint Ex. 2.0 at 46. InterMTA traffic from those plans is 'Non-Toll,' according to Sprint, in that Sprint does not impose additional charges on calls outside of the MTA and toll revenue

is less than 0.5% of total billed wireless revenue. *Id.* Sprint interprets FCC regulations to imply that only Toll Traffic is subject to access charges since it is only "exchange access" when a toll call is terminated. *Id*. at 43. With respect to Toll InterMTA Traffic, however, Sprint acknowledges that it is liable for access charges. Nonetheless, Sprint proposes language that indicates that the volumes of Toll InterMTA Traffic will be very small, and so Sprint should be able to deliver all of its traffic over the Interconnection Facilities. Staff Ex. 4.0 at 24-25.

While Sprint concerns itself just with the appropriate rate for its Toll InterMTA Traffic and Non-Toll InterMTA Traffic, AT&T Illinois subdivides Issue 39 into four sub-issues to completely specify and guarantee its ability to ensure that all InterMTA Traffic that it terminates from Sprint is treated as access traffic, and to ensure AT&T Illinois is compensated accordingly (through access charges). *Id.* at 25. Also, it appears that AT&T Illinois' proposed language is intended to guarantee that it will be able to accurately track the traffic that it terminates from Sprint, and assess the correct charges and ensure that it is routed on the correct facilities. *Id.* It should be noted that this issue is entangled with Issue 20, in which the parties dispute whether Sprint should be able to route non-IntraMTA traffic over Interconnection Trunks. As AT&T Illinois posits them, Issues 39(a), 39(b), 40(a), and 40(b) are entangled with other Issues that consider how to classify traffic as that subject to bill and keep or excluded from bill and keep. Id. For these sub-issues, AT&T Illinois' position is that InterMTA Traffic is access traffic, and not part of the ICA. AT&T Illinois Ex. 1.0 at 68-71. For its sub-issue (c), AT&T Illinois proposes to give itself the ability to estimate access charges in case Sprint misroutes its access traffic over Interconnection Trunks. *Id*. Similarly AT&T Illinois also strives to

mandate Sprint to forward the Jurisdictional Information Parameter ("JIP") to AT&T Illinois to determine the correct jurisdictional treatment for Sprint's traffic, even if Sprint's traffic is misrouted. *Id*. at 76. The proposed language at Attachment 2, 6.4.1.3 also details that, absent the JIP, AT&T Illinois will be able to use various other methods to assess the jurisdiction of usage. *Id*. at 76-77.

The Toll versus Non-Toll InterMTA issues also arise within Issue 7 and elsewhere in this docket. Staff agrees with AT&T Illinois that all InterMTA Traffic should be subject to access charges. Staff Ex. 4.0 at 26. The FCC made it quite clear in its CAF Order that InterMTA traffic was to be viewed as access traffic for purposes of intercarrier compensation. *Id*. In particular, the FCC's reform timeline does not make sense if it simply wanted all CMRS traffic, including InterMTA traffic, immediately reset to bill and keep. *Id*. Therefore, Staff recommends that the Commission reject Sprint's proposed language, and accept AT&T Illinois' language for Issues 39 and 40.

ISSUE 41

> *Sprint Description of Issue 41: Is either Party entitled to collect compensation on any of its originated traffic? If so, what originated traffic is subject to such compensation and at what rate?*
>
> *AT&T Illinois Description of Issue 41: Is AT&T entitled to collect switched access charges on its originating InterMTA traffic? If so, at what rate?*

AT&T Illinois' position is that it should be able to charge Sprint originating access charges for InterMTA calls originated by its customers to Sprint customers. Sprint, on the other hand, maintains that such calls should not be subject to access charges.

Sprint argues that most of the InterMTA calls originated by AT&T Illinois end-users are dialed as seven digit local calls and are only incidentally InterMTA. Sprint Ex.

2.0 at 46-47. Sprint noted that the traffic is handled the same way whether it's Intra- or InterMTA, and it does not impose additional charges on its customers or AT&T Illinois' customers to complete the call. *Id*. Sprint argues this means that such calls do not meet the definition of "toll" calls for which access is due. Sprint also argues that it is not acting as an interexchange carrier for the calls, and so it is not liable for originating access. *Id.* at 48-50. Finally, Sprint contends that by AT&T Illinois' own logic, in which it can assess access charges on Sprint to terminate InterMTA calls, Sprint should likewise be able to charge AT&T Illinois terminating access for providing termination services to AT&T Illinois end-users. *Id*. at 51.

AT&T Illinois witness Ms. Pellerin states that the Local Competition Order mandates originating access charges are due the originating carrier. AT&T Illinois Ex. 1.0 at 79. According to her, since the FCC did not reform originating access charges in its CAF Order, that regime still applies. *Id.* Thus, Ms. Pellerin's argues a CMRS carrier is providing toll services by carrying a call across the MTA boundary. *Id.*

Staff recommends that the Commission reject AT&T Illinois' proposed language, and accept Sprint's proposed language. Staff Ex. 4.0 at 29. AT&T Illinois notes that InterMTA traffic is access traffic, and argues that AT&T Illinois is originating access traffic, so Sprint, as a pseudo-IXC, is liable to pay originating access charges to AT&T Illinois. *Id*. at 28.

Staff, however, believes that there are at least two flaws in AT&T Illinois' argument. First, the Local Competition Order does not seem pertinent to the issue, and AT&T Illinois' reliance on that Order should not be considered by the Administrative Law Judges. *Id*. This traffic does not seem to be "certain interstate interexchange service

provided by CMRS carriers, such as some 'roaming' traffic that transits incumbent LECs' switching facilities." *Id.* Rather, it seems to be AT&T Illinois- originated traffic to a Sprint CMRS customer. In this case, the pseudo-IXC is AT&T Illinois. *Id.* Thus, in that sense, it's not Sprint's traffic, and Sprint should not have to pay originating access charges in order to terminate a call from an AT&T Illinois customer, even when the call crosses the MTA boundary.

Second, one way to look at this issue is to examine the case when a Sprint customer initiates an InterMTA call to an AT&T Illinois customer. *Id*. In that case, AT&T Illinois asserts its right to impose terminating access charges on Sprint. Yet AT&T Illinois also wants to impose originating access charges on Sprint when the call goes the other way. *Id*. at 28-29.

Consequently, Sprint's proposed language better comports with how Sprint-originated InterMTA Traffic is classified and compensated than AT&T Illinois' proposed language.

X. MISCELLANEOUS

ISSUE 13

AT&T Illinois Description of Issue 13(a): Should the definition of Interconnection be based on both Part 51 and Part 20 of the FCC's rules?

AT&T Illinois Description of Issue 13(b): Should there be a distinction between "Interconnection", as defined in 47 C.F.R. Section 51.5, and "interconnection"?

Sprint Description of Issue 13: Should this Agreement include provisions regarding indirect interconnection?

Staff opines that the term "Interconnection" should have the same meaning as provided in 47 C.F.R. §51.5 and should not reference 47 C.F.R. §20.3. Staff Ex. 2.0 at

8-9. Staff's definition of "Interconnection" is consistent with the intended use of the term under the circumstances of this case. If the term "Interconnection" is intended to refer to or identify a specific type of interconnection for which an incumbent LEC (AT&T in this case) must make transmission facilities available at cost-based rates under Section 251(c)(2), then the definition designed to achieve such purpose is the appropriate one and should be adopted. *Id.* at 5.

The FCC has clearly stated that Section 251(c)(2) interconnection is "for the linking of two networks for the mutual exchange of traffic" and thus has the same meaning as provided in 47 C.F.R §51.5. *Id.* at 4. AT&T's definition of the term "Interconnection" referencing 47 C.F.R §51.5 is appropriate, because, as Staff understands it, AT&T intends the term "Interconnection" to refer to Section 251(c)(2) interconnection for which it has the duty to provide interconnection facilities at cost-based rates. *Id.* at 5-6.

Staff notes that interconnection as provided in 47 C.F.R. §20.3 includes, but is not limited to, interconnection as provided in 47 C.F.R. §51.5. *Id.* at 3. Sprint's definition of the term "Interconnection" referencing 47 C.F.R. §20.3 is overly broad and inappropriate for the purpose of describing Section 251(c)(2) interconnection for which it is entitled to obtain transmission facilities at cost-based rates, and thus, should be rejected. *Id.* at 8.

Staff believes that AT&T's language in the GTCs Section 2.59 clarifying the difference between the term "Interconnection" (with an upper case "I") and the term "interconnection" (with a lower case "i") is unnecessary and should also be rejected. *Id.*

The meaning of interconnection as provided in Section 51.1 is already included in the term interconnection as provided in Section 20.3. *Id.* at 4.

Finally, Staff observes that Attachment 2 of the parties' ICA establishes provisions governing Section 251(c)(2) interconnection as well as provisions governing non-Section 251(c)(2) interconnection (e.g., for the purposes of delivering traffic to/from IXCs, to the E911 Selective Router to be routed to the Public Safety Answering Points ("PSAP"), and to/from a third party, etc.). *Id.* at 9. In view of Staff's recommendation on the definition of the term "Interconnection" (with an upper case "I"), it would not be appropriate to use the term "Interconnection" to collectively refer to all types of interconnection described in Attachment 2. Sprint is not entitled to cost-based rates for transmission facilities used for non-Section 251(c)(2) interconnection (i.e., not for the mutual exchange of traffic). *Id.* at 7. Accordingly, Staff recommends that the term "interconnection" (with a lower case "i"), instead of the term "Interconnection" (with an upper case "I"), be used in Attachment 2 Section 1.1. *Id.*

ISSUE 50 AND 51(a)

> *Joint Party Description of Issue 50: Should the definition of "Cash Deposit" and "Letter of Credit" be Party neutral?*
>
> *AT&T Description of Issue 51(a): Should the deposit requirement apply to both parties or only to the requesting carrier?*

Staff recommends that the Commission adopt Sprint's definitions of "Cash Deposit" and "Letter of Credit." Staff Ex. 3.0 at 9. In support of this recommendation, Staff witness Mr. Omoniyi testified that both parties to the ICA, including "AT&T Illinois[,] should be subject to deposit requirements under the ICA." *Id.* at 5. The Commission has found previously that deposit requirements are reasonable as long as they are not set at

disproportionately high levels. *Id.* (*citing* MCI, Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Illinois Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996, Arbitration Decision, ICC Docket No. 04-0469 (Nov. 30, 2004) ("MCI Arb. Decision") at 15-16). Just as AT&T Illinois seeks protection from the possibility Sprint's financial position will change, Sprint should be afforded similar protection in the event AT&T Illinois' financial position should change. Staff Ex. 3.0 at 6. This holds true for other carriers that adopt Sprint's ICA as well; those other carriers should be provided the same protections against a change in AT&T Illinois' financial position. *Id.* Finally, as AT&T Illinois' witness Mr. Greenlaw admitted, AT&T Illinois' financial position could change (*Tr.* at 675), and Staff point out that AT&T Illinois' financial position may change for the worse, in which case, Sprint may need the protection provided by a deposit in the future; therefore the mere assertion that Sprint has "no possible need for a deposit from AT&T Illinois" should be disregarded. AT&T Illinois Ex. 3.0 at 10. Furthermore, given the possibility AT&T Illinois' creditworthiness and financial condition could be affected negatively in the future, Sprint should be provided the financial protections afforded by a deposit requirement. Staff Ex. 3.0 at 6.

Additionally, Mr. Omoniyi testified that Sprint should be able to use any commercially reasonable Letter of Credit form it chooses, and should not be required to use AT&T Illinois' Letter of Credit form. *Id.* at 8. Any commercially reasonable form a Letter of Credit takes should be sufficient, and requiring a specific form would put the form over the purpose of the Letter of Credit. *Id.* However, Mr. Omoniyi testified that he does agree that the Letter of Credit should be irrevocable to ensure it is guaranteed that

a party will be paid for products and services sold to another party under the ICA. Staff Ex. 3.0 at 8-9.

ISSUE 51/51(b)/51(c)/51(d)

Sprint Description of Issue 51: What assurance of payment language should be included in the Agreement?

AT&T Illinois Description of Issue 51(b): Should the ICA provide that no deposit requirement is required as of the Effective Date based upon Sprint's and AT&T's dealings with each other under their previous interconnection agreements?

AT&T Illinois Description of Issue 51(c); Under what circumstances should a deposit be required and what should be the amount of the deposit?

AT&T Illinois Description of Issue 51(d): What other terms and conditions governing deposits should be included in the ICA?

Staff recommends that the Commission allow a Billing Party to request a deposit of a Billed Party if (1) the Billed Party has fewer than 12 consecutive months' prompt payment to the Billed Party; (2) the Billed Party files for Bankruptcy; or (3) the Billed Party publicly declares it is unable to pay its debts as they come due, at any time the ICA is effective, including the Effective Date. Staff Ex. 3.0 at 17-18, 22; *Tr.* at 936-937. Staff also recommends that the Commission adopt language stating that the amount of the deposit should be an amount up to three months' anticipated billing for each party. Staff Ex. 3.0 at 11. Finally, Staff recommends the Commission adopt language reflecting that deposits should be returned after 12 consecutive months' good payment history with the Billing Party within the most recent 12 billing months. *Id.* at 12-13.

To the extent AT&T Illinois argues that it needs a deposit requirement to avoid losses similar to those it has suffered from 2008 - Q3 2012 ($390 million in uncollectible losses to CLECs and CMRS providers) and 2002 - Q3 2012 ($112 million in

uncollectible losses to five Midwest AT&T Illinois ILECs), Staff recommends the Commission disregard that information. *Id.* at 15-16. The information provided by AT&T Illinois regarding the losses of AT&T ILECs may seem to support its argument that it may properly require a deposit from Sprint in this ICA, but these figures are taken out of context and should not be considered when determining whether a deposit requirement should be included in the ICA. *Id.* at 16; *see* AT&T Illinois Ex. 3.0 at 7-8. The Commission has been presented with similar information in other Interconnection Agreement arbitrations, and has determined that this information is indeed "meaningless . . . without providing the necessary context . . . (i.e., percentage of business losses)." Level 3 Arb. Decision at 15. Because AT&T Illinois does not provide the necessary context to evaluate whether the non-payment is an acute problem, as opposed to a regular business occurrence, the information should not be taken into consideration when determining whether the ICA should include a deposit requirement. Staff Ex. 3.0 at 16; *see* Level 3 Arb. Decision at 15.

Additionally, Sprint expressed concern in its Supplemental Verified Written Statement that AT&T Illinois would claim under the new ICA, there would be no payment history because there would be a new agreement, and AT&T Illinois would attempt to request a deposit. Sprint Ex. 4.0 at 62. However, AT&T Illinois made a "binding representation" in the hearing that if the ICA "has a trigger that allows [AT&T Illinois] to demand a deposit from [Sprint] if [Sprint] do[es] not have 12 months consecutive good payment history[,] AT&T Illinois will not take the position that you have to start all over when you have a new agreement." *Tr.* at 62. This should alleviate

Sprint's concerns, and those concerns should therefore be ignored by the Commission in making its decision on this issue.

Nonetheless, Staff recommends the Commission allow a Billing Party to request a deposit of a Billed Party if: (1) the Billed Party has fewer than 12 consecutive months' prompt payment to the Billed Party; (2) the Billed Party files for Bankruptcy; or (3) the Billed Party publicly declares it is unable to pay its debts as they come due, at any time the ICA is effective, including the Effective Date. Staff Ex. 3.0 at 20, 22; Tr. at 936-937. The Commission has on multiple occasions found deposit requirements to be reasonable when included in an Interconnection agreement, some of which also specify a three months' anticipated billing deposit requirement. *See, e.g,* MCI Arb. Decision at 15-16; Level 3 Arb. Decision at 15-17. Staff testified that it believes it is reasonable for any party, as the Billing Party, to request a deposit if the circumstances warrant it, even it that means requesting a deposit on the Effective Date of the ICA. Staff Ex. 3.0 at 21-22.

Moreover, in Staff's opinion, three months' anticipated billing would not allow AT&T Illinois to use the payment assurance process to gain a competitive advantage against Sprint; rather, Staff believes this amount provides for reasonable protections to the Billing Party while not over-burdening the Billed Party. *Id.* at 17. Commission has previously held a three-month deposit requirement is reasonable. MCI Arb. Decision at 13. Moreover, Commission rules allow for deposit requirements for business services of up to four months' estimated charges. 83 Ill. Admin. Code § 735.120(a). Although Sprint argues "requiring a Party to deposit 25% of annual billings[] is on its face excessive and creates unnecessary burdens for the Billed Party," Staff finds this amount to be well

within reason, and notes the Commission rules would allow for up to 33% of annual billing to be the deposit requirement for business services. Sprint Ex. 4.0 at 63; Staff Ex. 3.0 at 19; 83 Ill. Admin. Code § 735.120(a). Finally, Staff recommends this three months' anticipated billing deposit requirement be applicable to both parties in the ICA, which would result in deposit requirements for both Sprint and AT&T Illinois proportionate to their respective bills under the ICA. Staff Ex. 3.0 at 19-20.

Finally, Staff recommends the Commission adopt a return of deposit requirement when the Billed Party has achieved 12 consecutive months' prompt payment history with the Billing Party. *Id.* at 20-21.

ISSUE 52

Joint Description: Is it appropriate to include good faith disputes in the definitions of "Non-Paying Party," or "Unpaid Charges"?

Staff recommends the Commission should adopt Sprint's proposal as to the definition of both the term "Non-Paying Party" and the term "Unpaid Charge." Staff Ex. 3.0 at 26. Billed amounts which are subject to a good faith or bona fide dispute should be treated differently than billed amounts which are undisputed but unpaid. *Id.* Including good faith or bona fide disputes in the definition of either "Non-Paying Party" or "Unpaid Charges," or both, would improperly constrain a Billed Party from disputing charges in good faith. *Id.* at 24. To the extent AT&T Illinois argues adopting Sprint's proposed definitions of these terms would render "an agreed section" of the ICA meaningless, Staff believes that the section is not actually agreed. *See* AT&T Illinois Ex. 3.0 at 26. Both the term "Non-Paying Party" and the term "Unpaid Charge" area used in that section, but neither term is agreed; both AT&T Illinois and Sprint agree that the

definitions of these terms are at issue in this arbitration. *Id.* at 25-29; Sprint Ex. 1.0 at 55-57. The definition of these terms will affect the meaning of that section materially, and therefore, the parties should not be considered to have agreed to the section. Staff Ex. 3.0 at 25-26; *see* AT&T Illinois Ex. 3.1 at 14. Rather, Staff recommends the Commission adopt Sprint's suggested language as to the definitions of the terms, and clarify the section language in question by altering the section to read, in part, as follows: "If a ~~Non-Paying Party~~ Billed Party desires to dispute any portion of the ~~Unpaid Charges~~ bill, the ~~Non-Paying Party~~Billed Party must complete all of the following actions . . . ." Staff Ex. 3.0 at 25-26.

Additionally, Staff testified that the Commission should set a time frame for the initiation and resolution of billing disputes. *Id.* at 26.

ISSUE 53

AT&T Illinois Description of Issue 53(a): Should a party that disputes a bill be required to pay the disputed amount into an interest bearing escrow account pending resolution of the dispute?

AT&T Illinois Description of Issue 53(b): Should a Party that disputes a bill be required to use the preferred form or method of the Billing Party to communicate the dispute to the Billing Party?

AT&T Illinois Description of Issue 53(c): Should the ICA refer to the Party that disputes and does not pay a bill as the "Disputing Party" or the "Non-Paying Party?"

Sprint Description of Issue 53: Should the Billed Party be required to pre-pay good faith disputed amounts into an escrow account pending resolution of the good faith dispute?

Staff recommends that the Commission reject AT&T Illinois' proposal that disputed amounts should be paid into interest-bearing escrow accounts pending

resolution of the dispute. Staff Ex. 3.0 at 30. As Sprint notes, the FCC has determined it is an unreasonable practice for a billing carrier to require a disputing party to pre-pay good faith disputed amounts pending resolution of the dispute. *Id.* at 28; Sprint Ex. 1.0 at 57; *In the Matter of Sprint Communications Co., L.P. v. Northern Valley Communications, L.L.C.*, FCC 11-111, Memorandum Opinion and Order, 26 FCC Rcd 10780 at *10787 (July 18, 2011) (*finding* "the Tariff provision that requires all disputed charges to be paid 'in full prior to or at the time of submitting a good faith dispute' is unreasonable. . . . [I]t conflicts with sections 206 and 208 of the Act, which allow a customer to complain to the Commission or bring suit in federal district court for the recovery of damages regarding a carrier's alleged violations of the Act."). Staff believes this FCC Order correctly applies to an escrow account requirement as well; a requirement that a disputing party must escrow disputed amounts similarly conflicts with allowing a customer to complain to the FCC or bring suit in federal district court for recovery of damages. Staff Ex. 3.0 at 30. Staff notes that the Commission has also found it an unreasonable practice for a billing carrier to pre-pay disputed amounts pending resolution of the dispute. *Id.* at 28; Sprint Ex. 1.0 at 60-61; TDS Metrocom, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Illinois Bell Telephone Company d/b/a Ameritech Illinois Pursuant to Section 252(b) of the Telecommunications Act of 1996, ICC Docket No. 01-0338, Arbitration Decision (Aug. 8, 2001) ("TDS Arb. Decision") at 6; MCI Arb. Decision at 30. While AT&T Illinois proposes an escrow rather than pure pre-payment; in effect, these two options are the same for Sprint: Sprint would have to pre-pay the amount. Even if Sprint won the dispute and the money was returned, it would have lost other investment

opportunities that may have been more beneficial than the interest in the escrow account, and could have encountered unnecessary cash flow problems, among other things.

Staff, therefore, recommends that the Commission reject AT&T Illinois' proposal of requiring disputed amounts be deposited into an escrow account pending resolution of the dispute. Staff Ex. 3.0 at 30. The FCC and the Commission have previously held that to require funds be pre-paid or escrowed, respectively, in such circumstances is unreasonable, and therefore the Commission should reject AT&T Illinois' argument under this ICA as well. *Id.*; *In the Matter of Sprint Communications Co., L.P. v. Northern Valley Communications, L.L.C.*, FCC 11-111, Memorandum Opinion and Order, 26 FCC Rcd 10780 at *10787; TDS Arb. Decision at 6; MCI Arb. Decision at 30. Moreover, the amount in dispute may be so large it could become a burden on the Billed Party. Staff Ex. 3.0 at 30.

Additionally, if the Billed Party was required to escrow disputed amounts for each dispute, the requirement could have a chilling effect on the Billed Party, preventing the Billed Party from questioning a bill. *Id.* In this sense, the escrow requirement becomes an anti-competitive tool. *Id.*

Staff will refrain from making further recommendations on Issue 53/53(b) until Staff discusses that issue with regard to Issue 60, which is substantially similar to that for Issue 53/53(b).

Finally, Staff recommends that the Commission should reject AT&T Illinois' argument with regard to Issue 53/53(c). *Id.* As Staff discussed in more detail with regard to Issue 52, the Commission should not allow one Party to refer to the other Party that

disputes and does not pay a bill as the "Non-Paying Party." *Id.* at 30, 26. However, Staff also recommends that the Commission reject Sprint's proposal that such a party be called a "Disputing Party." *Id.* at 31. If a party disputes a bill in good faith and requests resolution with the Billing Party, the status of the Billed Party should not change. *Id.*

ISSUE 57

Joint Description: Under what circumstances may a Party disconnect the other Party for nonpayment, and what terms should govern such disconnection?

Staff recommends that the Commission allow AT&T Illinois to disconnect all unpaid and undisputed services under the ICA for non-payment without prior approval of the Commission. Staff Ex. 3.0 at 34. However, Staff recommends that the Commission require AT&T Illinois provide written notice to the Commission when AT&T Illinois intends to disconnect a carrier for non-payment under the ICA. *Id.* Specifically, this notice should be provided to the Commission at the same time AT&T Illinois provides the Discontinuance Notice to Sprint, and the notice to the Commission should be captioned as an "Emergency Notice." *Id.* The Emergency Notice should be simultaneously provided to both the Commission's Office of the Executive Director and the Commission's Director of Policy, Public Utilities Bureau. *Id.*

In support of its recommendation, Staff testified that the Commission should always be informed of any disconnection situations, regardless of the reason(s), and as the situation requires as a matter of public interest. *Id.* at 35. However, Sprint's proposal for disconnection of the services only after Commission approval is unnecessary. *Id.*

By way of example, Staff testified that according to Sprint's proposal, the following could occur: over a period of time, a carrier received some telephony services

from AT&T Illinois. The carrier is billed, but neither disputes nor pays the bill. *Id.* at 35. AT&T Illinois then sends a notice of disconnection for non-payment to the carrier. Rather than paying the bill or disputing it, the carrier does nothing. *Id.* Under Sprint's proposal, AT&T Illinois must then file a complaint or a request to disconnect with the Commission, and must obtain an approval to do so before any disconnection can be effected. *Id.* Meanwhile, AT&T Illinois must continue to serve the carrier until it obtains approval to disconnect. *Id.*

Staff testified that this scenario is unacceptable as it calls for the insertion of the Commission into what is essentially a common business dealing and process between the Parties involving bill collection and resolution of what amounts to an accounts receivable situation. *Id.* at 36. Although the Commission may preside over these issues when necessary, it need not pre-approve disconnection.

Moreover, Staff recommends the Commission should prevent the possibility of a situation in which a carrier that can neither pay its bills nor run a competitive business can become an economic hazard to incumbent carriers, and even the general public, by hiding behind lengthy procedural hurdles despite its own breach of the ICA. *Id.*

ISSUE 58

Joint Description: Should the period of time in which the Billed Party must remit payment in response to a Discontinuance Notice be forty-five (45) or fifteen (15) days?

Staff recommends the Commission find that a 15 day notice period from the receipt of a Discontinuance Notice is sufficient. Staff Ex. 3.0 at 38. Moreover, Staff testified that a 45 day notice period, as Sprint suggests, could lead to unnecessary

additional financial loss if the Billed Party defaults and becomes financially insolvent. *Id.* Finally, a 45 day notice period could create an inefficient market because a long delay in payment can mean that a financially handicapped carrier could remain in the market, surviving only on the credit of the Billing Party carrier. *Id.*

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AT&T Description: Should the ICA require the Disputing Party to use the Billing Party's preferred form in order to dispute a bill?

Sprint Description: Can a Party require that its form be used for a billing dispute to be valid?

Staff recommends that the Commission find that the Billed party should be allowed to use its own dispute form to dispute billing charges under the ICA, as long as the Billed Party is provided with sufficient information necessary to identify and process a billing dispute, no matter the format of the billing dispute notification. Staff Ex. 3.0 at 40, 41. Staff testified that because it is in the best interest that all good faith billing disputes be given adequate consideration based on the substance of the dispute, not merely the format of the notice to the Billed Party, only a commercially reasonable notice should be required. *Id.* at 42. To the extent AT&T Illinois argues that its form is commercially reasonable, Staff has no reason to disagree (although Staff has not seen the form AT&T Illinois proposes using). AT&T Illinois Ex. 3.1 at 3. However, allowing Sprint to use any commercially reasonable form allows Sprint the latitude to present the information in a manner it chooses while still requiring the pertinent information be required. Staff Ex. 3.0 at 40, 41. The substantive rights of Parties should not become subservient to a formatting issue. *Id.*

XI. CONCLUSION

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,

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